

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

**1391 ONTARIO ST. INC.**

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND  
INSOLVENCY ACT R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE  
COURTS OF JUSTICE ACT, R.S.O. 1990, c. c-43, AS AMENDED

**APPLICATION RECORD  
(Returnable June 3, 2025)**

May 6, 2025

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON N6A 5R8

**Tony Van Klink** LSO#: 29008M  
tvanklink@millethomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

**Lawyers for the Applicant,  
Business Development Bank of Canada**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

**1391 ONTARIO ST. INC.**

Respondent

APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. c-43, AS AMENDED

**TABLE OF CONTENTS**

<b><u>TAB</u></b>	<b><u>DOCUMENT</u></b>	<b><u>PAGE NO.</u></b>
<b>1</b>	Notice of Application returnable June 3, 2025	1 – 9
<b>2</b>	Affidavit of Gianna Torrelli sworn May 5, 2025	10 – 20
<b>EXHIBITS</b>		
<b>A</b>	Corporation Profile Report	21 – 28
<b>B</b>	Credit Agreement	29 – 50
<b>C</b>	Mortgage	51 – 70
<b>D</b>	Parcel Register	71 – 74
<b>E</b>	Construction Lien	75 – 76
<b>F</b>	Lion's Share bankruptcy application	77 – 85
<b>G</b>	Interim Receivership Order	86 – 101
<b>H</b>	Email dated April 14, 2025 re Consent	102 – 104
<b>I</b>	Suitor Bankruptcy Order	105 – 123
<b>J</b>	Demand for Payment and Enforcement Notice	124 – 127

<u>TAB</u>	<u>DOCUMENT</u>	<u>PAGE NO.</u>
<i>K</i>	Property Tax Certificate	128 – 130
<b>3</b>	Receivership Order	131 – 149
<b>4</b>	Blackline to Model Receivership Order	150 – 173
<b>5</b>	Consent of msi Spergel Inc.	174 – 176

# **TAB 1**

Court File No.:  
CV-25-00090112-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

**1391 ONTARIO ST. INC.**

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*  
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE*  
*ACT*, R.S.O. 1990, c. c-43, AS AMENDED

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing

- In person
- By telephone conference
- By video conference

at the following location

Via zoom videoconference – particulars to be provided by the Court.

on Tuesday, June 3, 2025 at 10:00 a.m., or as soon after that time as the Application can be heard.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: May 5, 2025

Harsimran K  
Issued by Sandhu

 Digitally signed by Harsimran K Sandhu  
Date: 2025.05.05 12:50:51 -04'00'

Local registrar

Address of 45 Main Street East  
court office Hamilton, ON L8N 2B7

TO: **SERVICE LIST**

## APPLICATION

1. The Applicant, Business Development Bank of Canada (“**BDC**” or the “**Bank**”) makes application for an Order substantially in the form attached at Tab “3” (the “**Draft Order**”) of the Application Record, including,

- (a) if necessary, abridging the time for and validating service of this application and dispensing with further service of same;
- (b) appointing msi Spergel Inc. (“**Spergel**”) as receiver and manager (the “**Receiver**”), without security, of the real property municipally known as 1391 Ontario St., Burlington, Ontario (the “**Real Property**”) and owned by the Respondent, 1391 Ontario St. Inc. (the “**Debtor**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the “**BIA**”) and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended (the “**CJA**”);
- (c) costs on a solicitor and client basis, plus HST, in accordance with the security and loan documents granted by the Respondent to BDC; and
- (d) such further and other relief as counsel may advise and this Honourable Court may permit.

2. The grounds for the application are:

- (a) The Debtor is an Ontario corporation and the owner of the Real Property;

- (b) BDC extended a loan to the Debtor to finance the purchase of, and renovations to, the Real Property. As of May 1, 2025, \$2,459,804.12, plus accruing interest and costs, is owing to BDC on the loan (the “**Indebtedness**”);
- (c) As security for the Indebtedness, BDC holds, among other things, a mortgage (the “**Mortgage**”) on the Real Property;
- (d) An interim receivership order and bankruptcy order have been made against the principal of the Debtor;
- (e) The Debtor has defaulted in the repayment of the Loan;
- (f) Events of default have occurred under the loan agreement and Mortgage;
- (g) BDC has demanded payment of the Indebtedness from the Debtor and given the Debtor notice under s. 244 of the *BIA* of its intention to enforce its security against the Real Property (the “**NITES**”);
- (h) The demand for payment has not been satisfied;
- (i) The 10-day notice period in the NITES has lapsed and the Mortgage is enforceable;
- (j) The Mortgage provides that upon the occurrence of an event of default, the Bank may commence proceedings for the appointment of a receiver and manager by the court;
- (k) The appointment of the Receiver is just and convenient;

(l) Spergel is a licensed trustee in bankruptcy and has consented to being appointed as Receiver by the Court;

(m) Rules 1.04, 2.03, 3.02, 16.08 and 38 of the *Rules of Civil Procedure*;

(n) Section 243 of the *BIA* and Section 101 of the *CJA*;

(o) Rules 6, 11 and 13 of the *Bankruptcy and Insolvency General Rules*; and

(p) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

(a) the affidavit of Gianna Torrelli sworn May 5, 2025 and the exhibits thereto;

(b) the Consent of Spergel to act as receiver, if so appointed; and

(c) such further and other evidence as counsel may advise and this Honourable Court may permit.

May 5, 2025

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink (LSO#: 29008M)**  
[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)  
Tel: 519.931.3509  
Fax: 519.858.8511

**Lawyers for the Applicant,  
Business Development Bank of Canada**

## SERVICE LIST

TO: **1391 Ontario Street Inc.**  
1 King Street West, 10<sup>th</sup> Fl.  
Hamilton, ON L8P 1A4

**Thomas Dylan Sujor**  
Email: dylan@elevationrealty.ca

AND TO: **msi Spergel Inc.**  
1100 - 200 Yorkland Blvd.  
Toronto, ON M2J 5C1

**Philip Gennis, J.D., CIRP, LIT**  
Tel: 416.498.4325  
Email: pgennis@spergel.ca

*Proposed Receiver*

AND TO: **Simpson Wigle LLP**  
1006 Skyview Drive, Suite 103  
Burlington, ON L7P 0V1

**Rosemary Fisher**  
Tel: 905.639.1052 ext. 239  
Email: fisherr@simpsonwigle.com

*Lawyers for the proposed receiver*

AND TO: **TDB Restructuring Limited**  
11 King St. West, Suite 700  
Toronto, ON M5H 4C7

**Jeffrey Berger, CPA, CA, CIRP, LIT**  
Tel: 647.726.0496  
Email: jberger@tdbadvisory.ca

*Interim Receiver and Bankruptcy Trustee of Thomas Dylan Sujor*

AND TO: **Fred Tayar & Associates PC**  
65 Queen Street West, Suite 1200  
Toronto, ON M5H 2M5

**Fred Tayar**  
Tel: 416.363.1800 x200  
Email: fred@fredtayar.com

*Lawyers for TDB Restructuring Limited*

AND TO: **The Fuller Landau Group Inc.**  
151 Bloor Street West, 12<sup>th</sup> Fl.  
Toronto, ON M5S 1S4

**Gary Abrahamson, CPA, CA, CIRP, LIT**  
Tel: 416.645.6524  
Email: [gabrahamson@fullerllp.com](mailto:gabrahamson@fullerllp.com)

*Court Appointed Receiver of The Lion's Share Group Inc.*

AND TO: **Norton Rose Fulbright Canada LLP**  
222 Bay Street, Suite 3000  
Toronto, ON M5K 1E7

**Jennifer Stam**  
Tel: 416,202.6707  
Email: [jennifer.stam@nortonrosefulbright.com](mailto:jennifer.stam@nortonrosefulbright.com)

*Lawyers for The Fuller Landau Group Inc.*

AND TO: **Ministry of Finance Legal Services Branch**  
Michael Starr Building  
33 King Street West, 6<sup>th</sup> Floor  
P.O. Box 627, Station A  
Oshawa, ON L1H 8H5

Email: [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca)

AND TO: **Canada Revenue Agency**  
**c/o Department of Justice (CRA)**  
120 Adelaide Street West, Suite 400  
Toronto, ON M5H 1T7

Email: [AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca](mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca)

AND TO: **1000660443 Ontario Inc.**  
332 Guelph Street, Unit 7 & 8  
Georgetown, ON L7G 4B5

*Construction lien claimant*

BUSINESS DEVELOPMENT  
BANK OF CANADA

and

Applicant

1391 ONTARIO ST. INC.

Respondent

Court File No.:  
CV-25-00090112-0000

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**NOTICE OF APPLICATION**

**MILLER THOMSON LLP**

One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink (LSO#: 29008M)**

Tel: 519.931.3509  
Fax: 519.858.8511  
Email: [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)

**Lawyers for the Applicant,  
Business Development Bank of Canada**

# **TAB 2**

Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**BUSINESS DEVELOPMENT BANK OF CANADA**

**Applicant**

- and -

**1391 ONTARIO ST. INC.**

**Respondent**

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 C. B-3 AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C-43, AS AMENDED

**AFFIDAVIT OF GIANNA TORRELLI  
(Sworn May 5, 2025)**

I, Gianna Torrelli, of the City of Toronto, Province of Ontario, MAKE OATH AND SAY:

**INTRODUCTION**

1. I am a specialist with the special accounts' unit of the applicant, Business Development Bank of Canada (the "**Bank**"). I am primarily responsible for monitoring the loan provided by the Bank to the debtor described in this affidavit.
  
2. The facts set forth in this affidavit are within my knowledge or determined from the face of documents attached as exhibits or held in the Bank's records and from information and advice provided to me from others. When matters deposed to herein are based upon

information and advice from others, I have identified the source of my information and do verily believe same to be true.

## **BACKGROUND**

3. The Respondent, 1391 Ontario St. Inc. (“**1391**” or the “**Debtor**”), is an Ontario corporation incorporated on November 17, 2022 with its registered head office in Cornwall, Ontario. A true copy of the corporation profile report for 1391 is attached as **Exhibit A** to this affidavit.

4. The principal of 1391 is Thomas Dylan Sujor (“**Sujor**”). Sujor is a real estate agent and investor and has personally guaranteed payment of 1391’s indebtedness to the Bank.

5. 1391 is the registered owner of the real property located at 1391 Ontario Street, Burlington, Ontario (the “**Real Property**”). The Real Property is an office building approximately 4,900 square feet in size.

6. The Bank made a \$2,446,000 loan to 1391 to finance the purchase of, and renovations to, the Real Property. As of May 1, 2025, \$2,459,804.12, plus accruing interest and costs, is owing on the loan.

7. To secure the repayment of its indebtedness to the Bank, the Debtor provided the Bank with, among other security, a mortgage over the Real Property.

8. Following default by the Debtor, the Bank demanded payment of its loan and gave notice to the Debtor under section 244 of the *Bankruptcy and Insolvency Act* (the

“**Enforcement Notice**”) of its intention to enforce its security. The statutory 10-day period provided for in the Enforcement Notice has lapsed and the Bank’s security is enforceable.

9. The Bank seeks to enforce its security against the Property by the appointment of a receiver and manager by the Court.

10. This affidavit is sworn in support of the Bank’s application for an order appointing msi Spergel Inc. (“**Spergel**”) as receiver and manager by the court of the Real Property. Spergel has consented to act as receiver and manager if so appointed.

## **THE INDEBTEDNESS**

11. Pursuant to a Letter of Offer dated December 2, 2022 (the “**Credit Agreement**”), the Bank made a \$2,446,000 loan to 1391 under loan no. 242499-01 (the “**Loan**”) to finance the purchase of, and renovations to, the Real Property. A true copy of the Credit Agreement is attached as **Exhibit B** to this affidavit.

12. The Credit Agreement provides that the principal amount of the Loan was to be repaid in a single payment of \$9,150 on February 1, 2024 and 299 consecutive monthly payments of \$8,150 starting on March 1, 2024. The Loan bears interest at the Bank’s floating base rate, from time to time, minus 1.3% per year. The accrued interest on the Loan is to be paid monthly on the first day of each month.

13. As of May 1, 2025, \$2,459,804.12 is outstanding for principal and accrued interest on the Loan as follows:

- Principal - \$2,371,650
- Interest - \$88,154.12

## **THE SECURITY**

14. As security for its obligations to the Bank, the Debtor provided the Bank with, among other things, a mortgage over the Real Property securing the principal sum of \$2,446,000 which mortgage was registered in the Halton land registry office on January 13, 2023 as instrument HR1943677 (the “**Mortgage**”).

15. A true copy of the Mortgage (including standard charge terms 20011) is attached hereto as **Exhibit C**.

16. Paragraph 11.1(i) of standard charge terms 20011 provides that upon the occurrence of an event of default, the Bank may commence proceedings in a court of competent jurisdiction for the appointment of a receiver.

17. Subject to any unpaid realty taxes, it is my understanding that the Bank has a first ranking charge over the Real Property.

## **THE REAL PROPERTY**

18. The Real Property is located at the corner of Ontario Street and Burlington Avenue in the City of Burlington. The Real Property is improved with a commercial office building with approximately 4,900 square feet of space. The Debtor purchased the Real Property in January 2023 and renovated it to be used as offices for a real estate agency.

19. A true copy of the parcel register for the Real Property is attached as **Exhibit D** to this affidavit.

20. As shown on the parcel register, the following registrations have been made against title to the Real Property subsequent to the registration of the Bank's Mortgage:

- (a) A construction lien in the amount of \$77,574 on September 24, 2024 (the "**Construction Lien**");
- (b) A court Order appointing TDB Restructuring Limited as interim receiver on November 15, 2024; and
- (c) A certificate of action with respect to the Construction Lien on February 7, 2025.

21. A true copy of the Construction Lien is attached as **Exhibit E** to this affidavit.

### **THE APPOINTMENT OF THE INTERIM RECEIVER**

22. On April 3, 2024, The Fuller Landau Group Inc. ("FLG") was appointed by the court as receiver of the property, assets and undertaking of The Lion's Share Group Inc. ("Lion's Share"), a private real estate investment and consulting company based in the Hamilton area.

23. On August 30, 2024, FLG as court appointed receiver of Lion's Share issued an application for a bankruptcy order against Suitor. The bankruptcy application alleges that Suitor is indebted to Lion's Share in the amount of \$2,671,342. A true copy of the bankruptcy application is attached as **Exhibit F** to this affidavit.

24. On October 7, 2024, an order (the "**Interim Receivership Order**") was made in the bankruptcy proceeding appointing TDB Restructuring Limited as interim receiver (the "**Interim Receiver**") of all of the property, assets and undertaking of Suitor. A true copy of the Interim Receivership Order is attached as **Exhibit G** to this affidavit.

25. Paragraphs 8 and 9 of the Interim Receivership Order prohibit the commencement of any proceeding or enforcement process in any court and stay the exercise of all rights and remedies against Suitor, certain real properties listed in the Interim Receivership Order, and “Related Entities” except with the written consent of the Interim Receiver or with leave of the Court. “Related Entities” is defined in the Interim Receivership Order as meaning “corporations or other entities associated with, related to or controlled by” Suitor.

26. 1391 is a “Related Entity” within the meaning of the Interim Receivership Order.

27. Despite being affected by the stay in paragraphs 8 and 9 of the Interim Receivership Order, the Bank was not provided with notice of the motion to obtain the Interim Receivership Order or notice of the Interim Receivership Order after it was made. The Interim Receivership Order came to the Bank’s attention in mid-November, 2024 after it engaged legal counsel that was already aware of the Interim Receivership Order.

28. The Bank, through its legal counsel, sought the consent of the Interim Receiver to the enforcement by the Bank of the Mortgage. In an email dated April 14, 2025, the Interim Receiver provided its consent. Attached as **Exhibit H** to this affidavit is a true copy of that email.

29. On March 25, 2025, a bankruptcy order was made against Suitor, a copy of which is attached as **Exhibit I** to this affidavit. It is my understanding that Suitor has filed an appeal from the Bankruptcy Order although I am unaware of the status of that appeal.

## **DEFAULT UNDER THE CREDIT AGREEMENT AND SECURITY**

30. 1391 has failed to make the required monthly principal and interest payments on the Loan. No payments have been made on the Loan since October 1, 2024.

31. The failure to make the required monthly principal and interest payments on the Loan is an event of default under the Credit Agreement. The Credit Agreement provides that upon an event of default, the Bank may demand immediate payment of the Loan.

32. On February 24, 2025, the Bank demanded payment of the Loan from the Debtor and served the Debtor with the Enforcement Notice. True copies of the demand for payment and Enforcement Notice are attached as **Exhibit J** to this affidavit.

33. No payments have been made on the Loan since the Bank demanded payment.

34. As of the date of this affidavit, the demand for payment has not been satisfied and no arrangement has been made for the repayment of the Loan.

35. Attached as **Exhibit K** to this affidavit is a true copy of a property tax certificate for the Property. As shown on that certificate, as of April 30, 2025 there were unpaid taxes of \$44,180.14 owing for the Property.

## **THE BANK SEEKS TO ENFORCE ITS SECURITY AND APPOINT A RECEIVER**

36. The Debtor is in default of its obligations to the Bank including (i) failing to make required monthly payments on the Loan, (ii) failing to repay the Loan as demanded, and (ii) failing to pay the property taxes for the Property. Under the terms of the Credit Agreement, the bankruptcy and interim receivership proceedings against Suitor are also an event of default.

37. The Bank has not been provided with anything to indicate that the Debtor is able, or will be able if more time is provided, to refinance or repay the Loan.

38. The Bank has lost confidence in the Debtor and Suitor and their ability or willingness to repay the Loan.

39. The Loan and Mortgage are in default. The Credit Agreement provides that if an event of default occurs, the Bank may enforce its security. Standard charge terms 20011 which are incorporated into the Mortgage provide that upon the occurrence of an event of default, the Bank may commence proceedings in a court of competent jurisdiction for the appointment of a receiver.

40. The Bank requests the assistance of this Honourable Court in the enforcement of the Bank's security rights and proposes that Spergel be appointed by the court as receiver of the Real Property.

41. Given the ongoing interim receivership and bankruptcy proceeding affecting Suitor and the Real Property and the registration of the construction lien on title to the Real Property, the Bank seeks to enforce its security by the appointment of a receiver by the court.

42. A receivership conducted under the court's supervision will,

(a) facilitate the realization of the Real Property in a stabilized environment under the supervision of the court;

(b) give prospective purchasers confidence that they will obtain clear title via a vesting order from the court which will aid in maximizing the realization from the Real Property; and

(c) ensure that the Real Property is realized upon and administered in accordance with the rights of the Bank and other stakeholders.

43. Spergel is a licensed trustee in bankruptcy and is prepared to act as receiver if so appointed by the court.

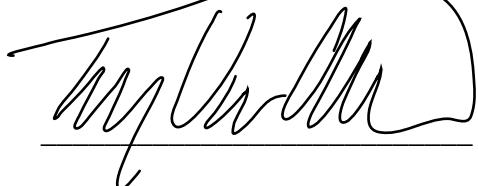
**SWORN/AFFIRMED BEFORE ME** via video-conference with the deponent in the City of Toronto, Ontario, and the Commissioner in the Municipality of Thames Centre, Ontario this 5<sup>th</sup> day of May, 2025. This affidavit was commissioned remotely and the declaration was administered in accordance with Ontario Regulation 431/20.

A Commissioner for taking affidavits in and for the Province of Ontario.  
(Tony Van Klink)

Signed by:  
  
Gianna Torrelli  
88BE7FF29EFA41B...

Gianna Torrelli

Attached are Exhibits A to K  
to the Affidavit of Gianna Torrelli  
sworn the 5th day of May, 2025.

A handwritten signature in black ink, appearing to read "Gianna Torrelli", is written over a horizontal line.

*A Commissioner, Etc.*

# EXHIBIT A



## Profile Report

1391 ONTARIO ST. INC. as of April 30, 2025

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	1391 ONTARIO ST. INC.
Ontario Corporation Number (OCN)	1000367410
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	November 17, 2022
Registered or Head Office Address	902 Second Street West, Suite 101, Cornwall, Ontario, K6J 1H7, Canada

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Minimum Number of Directors	1
Maximum Number of Directors	10

**Active Director(s)**

Name	DYLAN SUITOR
Address for Service	902 Second Street West, Suite 101, Cornwall, Ontario, K6J 1H7, Canada
Resident Canadian	Yes
Date Began	November 17, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintarilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

**Active Officer(s)**

**Name** DYLAN SUITOR  
**Position** President  
**Address for Service** 902 Second Street West, Suite 101, Cornwall, Ontario, K6H 1H7, Canada  
**Date Began** November 17, 2022

**Name** DYLAN SUITOR  
**Position** Secretary  
**Address for Service** 902 Second Street West, Suite 101, Cornwall, Ontario, K6H 1H7, Canada  
**Date Began** November 17, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

**Corporate Name History**

**Name**  
**Effective Date**

1391 ONTARIO ST. INC.  
November 17, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintarilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

### Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

### Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintarilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

## Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: DYLAN SUITOR	March 18, 2024
CIA - Initial Return PAF: DYLAN SUITOR	December 14, 2022
BCA - Articles of Incorporation	November 17, 2022

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

# EXHIBIT B



Letter of Offer dated December 2, 2022

**1391 Ontario Hold Co TBI**  
 245 Wyecroft Rd, Unit 4  
 Oakville, ON  
 L6K 3Y6

**Attention of: Mr. Dylan Sujor**

**Re: Loan No. 242499-01**

In accordance with this letter of offer of credit as amended from time to time (the "Letter of Offer"), Business Development Bank of Canada ("BDC") is pleased to offer you the following loan (hereinafter individually or collectively referred to as the "Loan"). The Letter of Offer is open for acceptance until December 12, 2022 (the "Acceptance Date") and must be received by BDC duly signed no later than the Acceptance Date otherwise it shall automatically be deemed withdrawn by BDC.

#### **LOAN PURPOSE AND FUNDING**

##### **Loan Purpose**

Realty Purchase	\$2,203,000.00
Renoovations	\$205,405.00
Contingency	\$37,595.00
<hr/>	
	\$2,446,000.00

##### **Funding**

BCD 242499-01	\$2,446,000.00
<hr/>	
	\$2,446,000.00

No change to the Loan Purpose or Funding may be made without BDC's prior written consent. The proceeds of the Loan may only be used for the Loan Purpose.

#### **DEFINITIONS**

In the Letter of Offer, capitalized terms have the meanings described in Schedule "A" – Section I or are defined elsewhere in the text of the Letter of Offer.

#### **LENDER**

BDC

**BORROWER**

1391 Ontario Hold Co TBI (the “**Borrower**”)

**GUARANTOR**

Dylan Sutor Personal Real Estate Corporation

Elev8 Inc.

Elevation Realty Network Inc.

Dylan Sutor

(Hereinafter individually or collectively referred to as the “**Guarantor**”). The terms of each guarantee are set forth in the Security section below.

**LOAN AMOUNT**

**Loan 242499-01:** \$2,446,000.00

**INTEREST RATE**

The Loan and all other amounts owing by the Borrower pursuant to the Loan Documents shall bear interest at the following rate:

**Loan 242499-01**

**Floating Rate**

BDC's Floating Base Rate minus a variance of 1.30% per year (the “**Variance 01**”). On the date hereof, BDC's Floating Base Rate is 8.05% per year.

**INTEREST CALCULATION**

Interest shall be calculated monthly on the outstanding principal, commencing on the date of the first disbursement, both before and after maturity, Default and judgement.

Arrears of interest or principal and all other amounts owing by the Borrower pursuant to the Loan Documents shall bear interest at the rate applicable to the Loan and shall be calculated and compounded monthly.

**REPAYMENT**

Principal of the Loan is repayable according to the following table. The balance of the Loan in principal and interest and all other amounts owing pursuant to the Loan Documents shall become due and payable in full on the Maturity Date indicated below.

Loan 242499-01

**Regular**

Payments			Start Date	End Date
Number	Frequency	Amount (\$)		
1	Once	9,150.00	01/02/2024	01/02/2024
299	Monthly	8,150.00	01/03/2024	01/01/2049

In addition, interest is payable monthly on the 1<sup>st</sup> day of the month (the “**Payment Date 01**”) commencing on the next occurring Payment Date 01 following the first advance on the Loan.

Maturity Date: January 1, 2049 (the “**Maturity Date 01**”).

**PREPAYMENT**

**Annual Prepayment Privilege:** Provided that the Borrower is not in default of any of its obligations to BDC, the Borrower may, once in any 12 month period, prepay up to 15% of the outstanding principal on any Loan without indemnity. The first prepayment can be made at any time more than one year after December 1, 2022. The prepayment privilege is not cumulative and each prepayment on an individual Loan must be at least 12 months subsequent to the last prepayment on that same loan. The prepayment privilege is not transferable from one individual Loan to another and is not applicable if any Loan is being repaid in full. If the loan is prepaid in full within 30 days following receipt of the amount paid as a prepayment privilege, BDC will calculate a prepayment indemnity, effective the day the full balance is repaid, on the amount of the last received prepayment privilege and add it to the prepayment indemnity calculated on the full remaining balance being repaid.

**Prepayment Indemnity:** In addition to the annual prepayment privilege, the Borrower may prepay at any time all or part of the principal provided that the Borrower pays the interest owing up to the time of the prepayment together with an indemnity equal to:

If the interest rate on the Loan is a floating rate:

- three months further interest on the principal prepaid at the floating interest rate then applicable to the Loan.

If the interest rate on the Loan is a fixed rate:

- the sum of (a) three months further interest on the principal prepaid at the fixed interest rate then applicable to the Loan; and (b) the Interest Differential Charge.

Partial prepayments shall be applied regressively on the then last maturing instalments of principal.

**SECURITY**

The Loan, interest on the Loan and all other amounts owing pursuant to the Loan Documents shall be secured by the following (the “**Security**”):

**Loan 242499-01**

1. First readvanceable mortgage in the principal amount of \$2,446,000 on land (approx. 0.2 Acres) (legally described as PT LTS 14, 15 & 16 , PL 90 , AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292 ; BURLINGTON) and buildings located at 1391 Ontario St. Burlington, ON. Property to be owned by 1391 Ontario Hold Co TBI. Building location survey or title insurance required.
2. General Security Agreement from 1391 Ontario Hold Co TBI providing a first security interest in all present and after-acquired personal property, except consumer goods.
3. Guarantee of Elev8 Inc. for the full amount of the Loan amount supported by a General Security Agreement providing a security interest in all present and after-acquired personal property, except consumer goods, subject to all existing and future registered charges, except charges in favour of a shareholder, director, officer or family member of any of those persons, or any entity in which any of those persons have an interest. The guarantor agrees that it is directly responsible for the payment of the cancellation, standby and legal fees.
4. Guarantee of Elevation Realty Network Inc. for the full amount of the Loan amount supported by a General Security Agreement providing a security interest in all present and after-acquired personal property, except consumer goods, subject to all existing and future registered charges, except charges in favour of a shareholder, director, officer or family member of any of those persons, or any entity in which any of those persons have an interest. The guarantor agrees that it is directly responsible for the payment of the cancellation, standby and legal fees.
5. Guarantee of Dylan Sutor Personal Real Estate Corporation for the full amount of the Loan amount supported by a General Security Agreement providing a security interest in all present and after-acquired personal property, except consumer goods, subject to all existing and future registered charges, except charges in favour of a shareholder, director, officer or family member of any of those persons, or any entity in which any of those persons have an interest. The guarantor agrees that it is directly responsible for the payment of the cancellation, standby and legal fees.
6. Guarantee of Dylan Sutor for 25% of the Loan amount. The guarantor agrees that it is directly responsible for the payment of the cancellation, standby and legal fees.
7. Ratification and adoption by resolution or agreement, executed after incorporation, of this Letter of Offer and any security provided from 1391 Ontario Hold Co TBI.

## DISBURSEMENT

The Loan funds shall be disbursed as follows:

### Loan 242499-01

1. Once all required Security is completed the loan will be disbursed to the appointed solicitor when requested based on the following:

#### REALTY PURCHASE:

Once applicable Conditions Precedent have been met (Except CP for Designated Substance Survey), BDC will advance funds of \$2,203,000 to complete the purchase of 1391 Ontario St. Burlington, ON.

#### RENOVATIONS:

Once applicable Conditions Precedent have been met, BDC will disburse up to 100% upon receipt of invoices and/or progress billing from the general contractor evidencing expenditures under the Loan Purpose (excluding applicable taxes), less any applicable holdbacks required by BDC until the total amount disbursed by BDC reaches \$243,000 (Including Contingency).

At project completion, any contingency funds not required to support the programmed expenditures will be cancelled.

#### SITE VISIT:

A physical inspection by a BDC representative of the expenditures under the Loan Purpose is to be done when 40% to 60% of construction/renovation project is completed.

Unless otherwise indicated above, funds for each Loan account number shall be disbursed to BDC's solicitor or notary mandated by BDC for security taking for the Loan.

## CONDITIONS PRECEDENT

Any obligation to make any advance under the Letter of Offer is subject to the following conditions being fulfilled to the satisfaction of BDC:

1. Receipt of the Security in form and substance satisfactory to BDC registered as required to perfect and maintain the validity and rank of the security, and such certificates, authorizations, resolutions and legal opinions as BDC may reasonably require.
2. Satisfactory review of all financial information relating to each Loan Party and its business as BDC may reasonably require.
3. No Default or Event of Default shall have occurred.
4. No Material Adverse Change shall have occurred.
5. Provision of documents evidencing expenditures under the Loan Purpose, if applicable.
6. Satisfaction of all applicable disbursement conditions contained in the Disbursement section of this Letter of Offer.

7. The Borrower will have incorporated a company which will have provided its registered certificate/articles of incorporation to BDC prior to disbursement. The undersigned principals on behalf of the Borrower and the Guarantors agree that if the principals do not incorporate a company, they are responsible for the payment of the Cancellation and Standby Fees as well as the Legal fees and Expenses referred to in this Letter of Offer. The Borrower agrees that the shareholders of the corporation shall be only those persons who have been represented to BDC as the proposed shareholders.
8. Obtain a construction contract acceptable to BDC from Camden Construction supporting the construction costs of \$205,405.
9. Prior to any demolition or renovation activities at the property located at 1391 Ontario St. Burlington, ON, the Borrower undertakes to obtain a Designated Substances Survey prepared by an external consultant acceptable to BDC for that property including, but not limited to, a survey of the building for Lead Containing Materials and Asbestos Containing Materials, which is to be conducted in accordance with the requirements of Regulation 278 of the Ontario Occupational Health and Safety Act ("O.Reg. 278/05"). The contents, conclusions and any problems identified in the Report must all be acceptable to BDC, acting in its sole judgment and discretion. If surveys confirm the presence of any of these designated substances, Management Programs are to be developed and implemented, in accordance with Ontario Regulation 278/05. The Borrower is responsible for the payment of all charges relative to the preparation of the report(s).
10. Provide a prospective market value appraisal report prepared by an independent AACI appraiser commissioned by or acceptable to BDC confirming the market value of the realty after improvements authorized under the Loan Purpose located at 1391 Ontario St. Burlington, ON. pledged as security is not less than - \$2,446,000.

The Borrower is responsible for the appraisal report fees.

11. Borrower is to provide written confirmation fully satisfactory to the Bank that all Income taxes and source deductions (Including HST) are current and up to date for Elevation Realty Network Inc.

#### LAPSING DATE

##### **Loan 242499-01**

Lapsing Date: December 1, 2023 (the "Lapsing Date 01").

Any undisbursed portion of a Loan shall lapse and be cancelled on the occurrence of the earliest of the following events:

- a) on the applicable Lapsing Date indicated above; or
- b) on the date the Borrower notifies BDC of its intention to cancel the Loan; or
- c) on the date BDC issues a notice to the Borrower that an Event of Default has occurred and that BDC has terminated its obligation to make any further advances under the Loan.

Each of the above is hereby considered a "Lapsing Event" and shall be subject to Cancellation Fees as provided for in this Letter of Offer.

## UNDERLYING CONDITIONS

The following conditions shall apply throughout the term of the Loan:

1. You shall abide by the following conditions in relation to the renting and/or occupancy of realty secured by BDC to, or by, parties related to the Borrower or Guarantor:
  - a) All tenants must be approved by BDC;
  - b) You will not, without the prior consent of BDC, permit any change of tenants or occupants, current and future, including any transfer of more than 25% of the voting shares of a tenant to any party which is not the Borrower or a Guarantor on the Loan; and
  - c) You will pay the cost of serving such legal and other notices to your tenants as BDC may deem necessary from time to time to protect BDC's interests in relation to this Loan.
2. Based on the annual financial statements as per BDC's reporting requirements for the borrowers and guarantors, maintain at all times a Fixed Charge Coverage Ratio (FCCR) equal to or greater than 1.10:1.00.

## REPRESENTATIONS AND WARRANTIES

The Loan Parties make the representations and warranties in Schedule "A" – Section II. These representations and warranties shall survive the execution of the Letter of Offer and shall continue in force and effect until the full payment and performance of all obligations of the Loan Parties pursuant to the Loan Documents.

## Covenants

Each Loan Party shall perform the covenants in Schedule "A" – Section III. These covenants shall survive the execution of the Letter of Offer and shall continue in force and effect until the full payment and performance of all obligations of the Loan Parties pursuant to the Loan Documents.

## REPORTING OBLIGATIONS

The Borrower shall provide to BDC the following financial statements and other documents:

Company	Type	Frequency	Period Ending
Elev8 Inc.	Compilation Engagement prepared by a CPA	Annual	December
1391 Ontario Hold Co TBI	Compilation Engagement prepared by a CPA	Annual	December
Dylan Sujor Personal Real Estate Corporation	Compilation Engagement prepared by a CPA	Annual	December
Elevation Realty Network Inc.	Review Engagement	Annual	December

The above annual financial statements and other documents indicated as required annually shall be provided to BDC within 90 days following the applicable Period Ending.

If financial statements or other documents are required more frequently than on an annual basis, same shall be provided to BDC within 30 days following each applicable Frequency.

In addition, the Borrower shall provide any other financial and operating statements and reports as and when BDC may reasonably require.

The Loan Parties also agree that the Reporting Obligations above shall apply to all other existing BDC loans to the same Borrower, if any, and the letter(s) of offer for such existing loans are deemed amended accordingly. Furthermore, such amended Reporting Obligations shall continue to be effective in respect of said existing letters of offer notwithstanding that this Letter of Offer may be reimbursed or cancelled.

### **EVENTS OF DEFAULT**

The occurrence of any of the events listed in Schedule "A" – Section IV constitutes an event of default under the Letter of Offer (each an "Event of Default"). If an Event of Default occurs, any obligation of BDC to make any advance, shall, at BDC's option, terminate and BDC may, at its option, demand immediate payment of the Loan and enforce any Security. Notwithstanding any other provision of this Letter of Offer or any other Loan Document, the parties hereto agree that the time limited for commencement of any action to enforce the obligations of the Borrowers and Guarantors, including the enforcement of any Security, shall not commence until BDC has issued a written demand for full payment of the Loan.

The exercise by BDC of any of its rights shall not preclude it from exercising any other rights resulting from this Letter of Offer or Loan Documents, as BDC's rights are cumulative and not alternative. No action or omission on the part of BDC shall constitute or imply a renunciation of its rights to determine that a Default or Event of Default has occurred or to avail itself of its rights resulting therefrom.

### **FEES**

#### Cancellation Fee

If the Loan is not fully disbursed due to a Lapsing Event, regardless of the reason for the Lapsing Event, the Loan Parties shall pay BDC a cancellation fee in proportion to the percentage of the Loan that is cancelled, based on the amount below being the fee if 100% of the Loan is cancelled. No cancellation fee will be payable if less than 50% of the Loan is cancelled. If the Loan includes funds to refinance an existing BDC Loan, those funds shall be excluded from the calculation of the percentage of the Loan that is cancelled.

The cancellation fee is payable on demand and is liquidated damages, not a penalty, and represents a reasonable estimate of BDC's damages should the Loan be cancelled or allowed to lapse in whole or in part.

#### **Loan 242499-01**

Cancellation Fee: \$73,380.00 (the "Cancellation Fee 01").

### Standby Fee

The Loan Parties shall pay BDC a non-refundable standby fee calculated at a rate as indicated below on the portion of the Loan which has not been advanced or cancelled. This fee shall be calculated daily and be payable in arrears commencing on the date indicated below and on each Payment Date thereafter.

#### **Loan 242499-01**

Rate: 1.50% per annum

Date: June 1, 2023

### Legal Fees and Other Expenses

The Loan Parties shall pay, on demand, all legal fees and expenses and other out-of-pocket costs of BDC, incurred in connection with the Loan and the Loan Documents, whether or not any documentation is entered into or any advance is made to the Borrower. All legal and other out-of-pocket expenses of BDC in connection with any amendment or waiver related to the Loan and the Loan documents shall also be for the account of the Loan Parties.

All costs, fees, expenses and protective disbursements incurred for the enforcement of the Loan and the Loan Documents are payable by the Loan Parties, including the full amount of all legal and professional fees and expenses paid by BDC at the rate at which those amounts are billed to BDC.

### Loan Management Fee

The Loan Parties shall pay BDC an annual management fee as indicated below. This management fee is payable annually on the Payment Date immediately following each anniversary of the first advance of the specific Loan account number. This fee is non-refundable and is subject to change at BDC's sole discretion, acting reasonably, effective upon the Borrower's receipt of written notification from BDC, to cover additional costs or fees incurred in the management of the Loan, including, but not limited to, resulting from the Borrower's failure to remit financial statements or other documents as required under the Letter of Offer.

#### **Loan 242499-01**

\$750.00 per year (the "Management Fee 01").

### Transaction Fees

The Borrower shall pay BDC loan amendment and Security processing fees charged for the administrative handling of the Loan.

### CONFLICTS

The Loan Documents constitute the entire agreement between BDC and the Loan Parties. To the extent that any provision of the Letter of Offer is inconsistent with or in conflict with the provisions of the other Loan Documents, such provision of the Letter of Offer shall govern.

## INDEMNITY

The Borrower shall indemnify and hold BDC harmless against any and all claims, damages, losses, liabilities and expenses incurred, suffered or sustained by BDC by reason of or relating directly or indirectly to the Loan Documents save and except any such claim, damage, loss, liability and expense resulting from the gross negligence or wilful misconduct of BDC.

## GOVERNING LAW

This Letter of Offer shall be governed by and construed in accordance with the laws of the jurisdiction in which the Business Centre of BDC is located as shown on the first page of this Letter of Offer.

## SUCCESSORS AND ASSIGNS

The Letter of Offer shall extend to and be binding on each Loan Party and BDC and their respective permitted successors and assigns. BDC, in its sole discretion, may assign, sell or grant participation in (a "transfer") all or any part of its rights and obligations under the Loan or the Loan Documents to any third party, and the Loan Parties agree to sign any documents and take any actions that BDC may reasonably require in connection with any such transfer. Upon completion of the transfer, the third party will have the same rights and obligations under the Loan Documents as if it were a party to them, with respect to all rights and obligations included in the transfer and BDC will be released to the extent of any interest under the Loan or Loan Documents it assigns. BDC may disclose information it has in connection with the Borrower or any Loan Party to any actual or prospective transferee. No Loan Party shall have the right to assign any of its rights or obligations under or pursuant to the Loan Documents without BDC's prior written consent.

## ACCEPTANCE

The Letter of Offer and any modification of it may be signed and accepted by an original ink signature or by electronic signature as permitted by BDC, and may be delivered on paper, fax, or in an electronic format (PDF) through BDC's electronic client portal, or any other electronic means of communication acceptable to BDC. It may also be signed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same Letter of Offer.

## SCHEDULE

The Letter of Offer includes Schedule "A" which contains Definitions, Representations and Warranties, Covenants, Events of Default and General Terms and Conditions. Schedule "A" has been inserted after the signature page and forms an integral part of the Letter of Offer.

## LANGUAGE CLAUSE

The parties hereby confirm their express wish that the Letter of Offer and all related documents be drawn up in the English language. Les parties reconnaissent leur volonté expresse que la présente lettre d'offre ainsi que tous les documents qui s'y rattachent soient rédigés en langue anglaise.

Should you have any questions regarding the Letter of Offer, do not hesitate to communicate with one of the undersigned.

*Kim Elsinga*

Kim Elsinga  
Senior Account Manager  
Phone: (905) 315-9242  
Fax: (905) 315-9243  
Kim.ELSINGA@bdc.ca

*Tina MacKinnon*

Tina MacKinnon  
Client Support Coordinator  
Phone: (519) 514-1209  
Tina.MACKINNON@bdc.ca

**ACCEPTANCE**

Each Loan Party hereby accepts the terms and conditions set forth above and in the attached Schedule "A".

This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

**1391 Ontario Hold Co TBI**

E-SIGNED by Dylan Sujor  
on 2022-12-02

\_\_\_\_\_, Authorized Signing Officer

Name: Dylan Sujor  
[Please print name of signing party]

**GUARANTOR(S)****Dylan Sujor Personal Real Estate Corporation**

E-SIGNED by Dylan Sujor  
on 2022-12-02

\_\_\_\_\_, Authorized Signing Officer

Name: Dylan Sujor  
[Please print name of signing party]

**Elev8 Inc.**

E-SIGNED by Dylan Sujor  
on 2022-12-02

\_\_\_\_\_, Authorized Signing Officer

Name: Dylan Sujor  
[Please print name of signing party]

**Elevation Realty Network Inc.**

E-SIGNED by Dylan Sujor  
on 2022-12-02

\_\_\_\_\_, Authorized Signing Officer

Name: **Dylan Sujor**  
*[Please print name of signing party]*

E-SIGNED by Dylan Sujor  
on 2022-12-02

**Dylan Sujor**

December 2, 2022

**SECTION I - DEFINITIONS**

**A. General Definitions:**

**"BDC's Base Rate"** – means the annual rate of interest announced by BDC through its offices from time to time as its base rate and, as the case may be, subject to a discount for the duration, applicable to each of BDC's fixed interest rate plans then in effect for determining the fixed interest rates on Canadian dollar loans.

**"BDC's Floating Base Rate"** – means the annual rate of interest announced by BDC through its offices from time to time as its floating rate then in effect for determining the floating interest rates on Canadian dollar loans. The interest rate applicable to the Loan shall vary automatically without notice to the Borrower upon each change in BDC's Floating Base Rate.

**"BDC's US Dollar Floating Base Rate"** – means the 1-month US Dollar floating base rate set the last business day of each month for the following month for determining the floating interest rates on US Dollar loans. The interest rate applicable to the Loan shall vary automatically without notice to the Borrower upon each change in BDC's US Dollar Floating Base Rate. BDC's US Dollar Floating Base Rate for the period from the date of the first advance on the Loan to the first business day of the following month will be the 1-month US Dollar floating base rate as established by BDC on the first business day of the month in which the funds are disbursed. Thereafter, the 1-month US Dollar Floating Base Rate may vary on the first business day of each month.

**"Change of Control"** – means any operation or series of transactions pursuant to which the Control of a Person is transferred from one Person to another or required by a Person, or any binding undertaking to proceed with any such operations.

**"Control"** – means the power to, directly or indirectly, acting alone or together with other Persons, direct or cause the direction of the management, business, affairs or policies of a Loan Party, whether through ownership of partnership interests, trust interests, or voting securities, by contract or otherwise, including, but without limiting the generality of the foregoing, in the case of a corporation, a Person is deemed to control a corporation if such Person (or such Person and its affiliates) holds, directly or indirectly, more than fifty per cent (50%) of the voting rights of the corporation. For the purposes of this definition, indirect control will include, without limitation, control that is exercised by one Person over another, through an intermediary that is controlled by the first.

**"Corresponding Fixed Interest Rate Plan"** – means, at any time in respect of a prepayment, the fixed interest rate plan then being offered by BDC to its clients equal to the number of years, rounded to the nearest year (minimum of one year), from the date such prepayment is received to the next scheduled Interest Adjustment Date (or the Maturity Date if earlier).

**"Default"** – means an Event of Default or any condition that, with the giving of notice, the passage of time or otherwise, is susceptible of being an Event of Default.

**"Equity Interests"** – means, with respect to any Person, any and all shares, interests, participations, rights in, or other equivalents (however designated) of such Person's capital, including any interest in a partnership, limited partnership or other similar Person and any beneficial interest in a trust, which carry the right to vote on the election of directors or individuals exercising similar functions in respect of such Person and/or which entitle their holder to participate in the profits of such Person.

**"Interest Adjustment Date"** – means, in respect of any fixed interest rate plan, the day after the Interest Expiration Date of such fixed interest rate plan.

**"Interest Differential Charge"** – means, in respect of the prepayment of the Loan for any portion of the Loan on a fixed interest rate plan or the selection by the Borrower of a new interest rate plan prior to the Interest Expiration Date, if, on the date of the prepayment or the selection of the new plan, as applicable, the BDC's Base Rate for the Corresponding Fixed Interest Rate Plan is lower than the BDC's Base Rate in effect when the Borrower entered or renewed the fixed interest rate plan, whichever is most recent, the amount calculated as follows:

- (i) the difference between the two rates;
- (ii) such interest differential is multiplied by the principal that would have been outstanding at each future Payment Date until the next Interest Adjustment Date (or the maturity of the principal if earlier);
- (iii) the Interest Differential Charge is the present value of those monthly amounts calculated using BDC's Base Rate for the Corresponding Fixed Interest Rate Plan as the discount rate. In the case of partial prepayment,

the Interest Differential Charge will be reduced in the same proportion as the amount prepaid bears to the principal outstanding on the Loan at the time prepayment is received. If the Loan is secured by a mortgage or a hypothec on real estate and the Loan is prepaid in full after 5 years from the date of the mortgage or hypothec, the Interest Differential Charge shall not be payable if the mortgage or hypothec is given by an individual and shall only be payable if permitted under the *Interest Act*.

**"Interest Expiration Date"** – means the date on which a fixed interest rate plan expires.

**"Loan"** – shall have the meaning indicated in the Letter of Offer, or, as the context may require, at any time the unpaid principal balance of the Loan.

**"Loan Documents"** – means, collectively, the application for financing, the Letter of Offer, the security contemplated by the Letter of Offer and all other documents, instruments and agreements delivered in connection with the foregoing.

**"Loan Party"** – means either the Borrower or the Guarantor and "Loan Parties" means collectively each of the Borrower and the Guarantor.

**"Material Adverse Change"** – means:

- (i) a material adverse change in, or a material adverse effect upon, the business, assets, properties, liabilities (actual or contingent), operations, condition (financial or otherwise), or prospects, of any Loan Party, or any Person who Controls a Loan Party;
- (ii) a material impairment of the ability of any Loan Party to perform any of their obligations under any Loan Document; or
- (iii) a material adverse effect upon any substantial portion of the assets subject to security in favour of BDC or upon the legality, validity, binding effect, rank or enforceability of any Loan Document.

**"Person"** – includes any natural person, corporation, company, limited liability company, trust, joint venture, association, partnership, limited partnership, governmental authority or other entity, and a natural person in his or her capacity as trustee, executor, administrator, or other legal representative and any other form of organization or entity whatsoever.

**"Public Issuer"** – means any Loan Party whose Equity Interests are listed or posted for trading on the Toronto Stock Exchange or the TSX Venture Exchange or any other stock exchange or over-the-counter market acceptable to BDC.

**"Public Issuer Notice"** – means a written notice delivered by a Public Issuer to BDC as described in the Covenants section of this Schedule "A".

#### B. Financial Definitions – the following definitions apply if used in this Letter of Offer:

**"Adjusted EBITDA"** – means EBITDA adjusted by gains/losses on disposal of assets, other non-cash adjustments presented in the statement of cash flow and all extraordinary items presented as per GAAP financial measures.

**"ASPE"** – means accounting standards for private enterprises. ASPE are the Canadian generally accepted accounting principles (GAAP) approved by the Accounting Standards Board for private enterprises in Canada who have not elected to adopt IFRS.

**"Available Funds"** – means in respect of any Loan Party for any period of 12 months, the sum of the net profits before non-recurring or non-operating items that are not related to normal operations (as designated by the external accountant) plus depreciation and amortization; plus deferred income taxes; and minus dividends.

**"Available Funds Coverage Ratio"** – means the ratio of Available Funds over the Current Portion of Term Debt.

**"Capital Expenditures"** – means, with respect to any period of 12 consecutive months, all payments or accruals for any (i) property, plant and equipment, (ii) intangible assets and (iii) development costs that are required to be capitalized under GAAP.

**"Current Portion of Term Debt or CPTD"** – means the scheduled principal payments on Term Debt and lease payments on capital leases over the next 12-month period.

**"Debt-to-capital ratio"** – means the ratio of (A) the sum of (i) outstanding operating line of credit and (ii) Term Debt; by (B) the sum of (i) outstanding operating line of credit, (ii) Term Debt, and (iii) Tangible Equity.

**"Distributions"** – means, for any period of 12 consecutive months, the total of the following:

- (i) the payment or declaration of any dividend (or distribution in case of a partnership or trust);
- (ii) the purchase, redemption or other acquisition or retirement of any capital stock (including the premium paid);
- (iii) the change in subordinated loans or advances from the shareholders, partners, directors, or other related entities; and
- (iv) the change in loans or advances to the shareholders, partners, directors, or other related entities.

The sum of items (i), (ii), (iii) and (iv) cannot be negative.

**"EBITDA"** – means earnings before Interest Expenses, taxes, depreciation, and amortization.

**"Fixed Charge Coverage Ratio or FCCR"** – means the ratio of (A) Adjusted EBITDA for such period less (i) current income taxes during such period taken from the annual financial statements, (ii) Unfunded Capital Expenditures incurred during the applicable period, (iii) Distributions paid during such period; by (B) the sum of (i) CPTD and (ii) the Interest Expenses for such period.

**"GAAP"** – means Generally Accepted Accounting Principles, with respect to broad principles and conventions of general application as well as rules and procedures that determine accepted accounting practices at a particular time (including, without limitation, IFRS, ASPE, US GAAP, etc., as the case may be). Unless otherwise specifically provided herein, any accounting term used in this Letter of Offer shall have the meaning customarily given such term in accordance with GAAP and all financial computations hereunder shall be computed in accordance with GAAP consistently applied.

**"IFRS"** – means International Financial Reporting Standards. IFRS are the Canadian generally accepted accounting principles (GAAP) approved by the Accounting Standards Board for publicly accountable enterprises and other categories of reporting entities who are permitted, but not required, to apply this set of standards.

**"Interest Expenses"** – means financial expenses (i.e., bank charges as well as interest on short-term and long-term debt, on Subordinated Debt, and on capital leases) as reflected in the statement of earnings.

**"Subordinated Debt"** – means debt with or without a convertible feature and with or without a variable return that normally ranks behind that of the senior secured lenders. Depending on the structure, the instrument of return may include interest, fixed/variable bonuses, royalties, bonus equity, warrants, or dividends.

**"Tangible Equity"** – means the sum of the share capital (owners' capital for non-incorporated businesses); plus retained earnings (accumulated net income); plus contributed surplus; plus postponed loans or advances from the shareholders (owners) and related businesses; minus loans or advances to the shareholders (owners), directors, related or non-related entities; minus the book value of shares redeemable at the holder's option, or shares subject to a formal redemption agreement.

**"Term Debt"** – means the sum of the long-term debt, the Subordinated Debt, and the capital leases including the current portion to be paid over the next 12 months; plus the redemption amount of shares redeemable at the holder's option, or shares subject to a formal redemption agreement.

**"Term Debt to Tangible Equity Ratio"** – means the ratio of the Term Debt over the Tangible Equity.

**"Total Debt/Adjusted EBITDA Ratio"** – means the ratio of (A) the sum of (i) outstanding operating line of credit and (ii) Term Debt; by (B) Adjusted EBITDA.

**"Unfunded Capital Expenditures"** – means, with respect to any period of 12 consecutive months, the aggregate of all Capital Expenditures incurred less the sum of (i) net cash proceeds generated from the sales of tangible and intangible assets, (ii) issuance of net new Term Debt, and (iii) issuance of new equity.

**"Working Capital"** – means the total of current assets minus the total of current liabilities. Current assets includes, but is not limited to, the following: cash on deposit, accounts receivable (trade and other), inventory and prepaid expenses. Current liabilities includes, but is not limited to, the following: bank advances, cheques in transit, accounts payable (trade and other) and the Current Portion of Term Debt.

**"Working Capital Ratio"** – means the ratio of the total current assets over the total current liabilities. Current assets includes, but is not limited to, the following: cash on deposit, accounts receivable (trade and other), inventory and prepaid expenses. Current liabilities includes, but is not limited to, the following: bank advances, cheques in transit, accounts payable (trade and other) and the Current Portion of Term Debt.

## SECTION II - REPRESENTATIONS AND WARRANTIES

Each Loan Party hereby represents and warrants to BDC that:

1. For any Loan Party other than an individual guarantor, it is a sole-proprietorship, partnership, trust or corporation, as the case may be, duly constituted, validly existing and duly registered or qualified to carry on business in each jurisdiction where it is required by applicable laws to be so registered or qualified.
2. The execution, delivery, and performance of its obligations under the Letter of Offer and the other Loan Documents to which it is a party have been duly authorized and constitute legal, valid and binding obligations enforceable in accordance with their respective terms.
3. It is not in violation of any applicable law, which violation could lead to a Material Adverse Change.
4. No Material Adverse Change exists and there are no circumstances or events that constitute or would constitute, with the lapse of time, the giving of notice or otherwise, a Material Adverse Change.
5. No Default or Event of Default exists.
6. All information provided by it to BDC is complete and accurate and does not omit any material fact and, without limiting the generality of the foregoing, all financial statements delivered by it to BDC fairly present its financial condition as of the date of such financial statements and the results of its operations for the period covered by such financial statements, all in accordance with GAAP.
7. There is no ongoing, pending or threatened claim, action, prosecution or proceeding of any kind before any court, tribunal, government board or agency including but not limited to non-compliance with environmental law or arising from the presence or release of any contaminant against it or its assets before any court or administrative agency which, if adversely determined, could lead to a Material Adverse Change.
8. Neither the Loan Party, nor any Person who Controls the Loan Party, nor any officer, director or shareholder of a Loan Party, has been charged with, pled guilty to, or has been convicted of, a criminal offence (other than a conviction for which a Pardon has been granted or other than a criminal offence which has been disclosed in writing to BDC prior to issuing this Letter of Offer).
9. In respect of properties and assets charged to BDC, it has good and marketable title, free and clear of any encumbrances, except those encumbrances which BDC has accepted in writing.

The foregoing representations and warranties shall remain in force and true until the Loan is repaid in full.

## SECTION III - COVENANTS

Each Loan Party shall:

1. Perform their obligations and covenants under the Loan Documents.
2. Maintain in full force and effect and enforceable the Security contemplated by this Letter of Offer.
3. Notify BDC immediately of the occurrence of any Default under the Letter of Offer or any other Loan Documents.
4. Comply with all applicable laws and regulations.
5. Observe BDC's insurance requirements:
  - a. Keep all secured assets insured for physical damages and losses on an "All-Risks" basis, including Equipment Breakdown (or Boiler & Machinery) where applicable, for their full replacement value and cause all such insurance policies to name BDC as loss payee as its interests may appear. The policies shall also name BDC as mortgagee and include a standard mortgage clause in respect of buildings over which BDC holds Security;
  - b. Maintain adequate Marine and/or Aviation insurance for all secured Aircraft or Marine vessels;
  - c. If required as further Security, assign or hypothecate all insurance proceeds to BDC;
  - d. If requested by BDC, maintain adequate Commercial General Liability insurance, and/or Environmental Liability and Clean-Up insurance, including BDC as additional insured to protect it against any losses or claims arising from pollution or contamination incidents, or other risks associated with the Borrower's business, or any other type of insurance BDC may reasonably require;
  - e. Ensure that all insurance policies include a 30-days prior notice of cancellation clause in favour of BDC;
  - f. Provide certificates of insurance for all such policies; and
  - g. Maintain all insurance policies in effect to BDC's standards for the duration of the Loan.

6. Notify BDC immediately of any material loss or damage to their property.
7. Without limiting the generality of paragraph 4 above, in relation to their business operations, projects and all assets of any nature, operate in conformity with all environmental laws and regulations; make certain that their assets are and shall remain free of environmental damage; inform BDC immediately upon becoming aware of any environmental issue and promptly provide BDC with copies of all communications with environmental authorities and all environmental assessments; pay the cost of any external environmental consultant engaged by BDC to effect an environmental audit and the cost of any environmental rehabilitation or removal necessary to protect, preserve or remediate the assets, including any fine or penalty BDC is obligated to incur by reason of any statute, order or directive by a competent authority.
8. Promptly pay all government remittances, assessments and taxes and provide BDC with proof of payments as BDC may request from time to time. Specifically regarding real estate property or other taxes on lands mortgaged to BDC, if a Loan Party fails to pay any instalment of such taxes when due, BDC may, in its sole discretion, provide written notice to the Borrower requiring the Loan Parties to pay BDC monthly payments as calculated by BDC to establish a tax reserve account, and in such event, the Loan Parties hereby authorize BDC to collect monthly pre-authorized payments and to pay the relevant taxing authority as required. No further consent from the Loan Parties shall be required. Should there be insufficient funds to satisfy the taxes owing, the Loan Parties will pay the shortfall. BDC will not be responsible for funding the shortfall or any arrears, including interest and other charges. The Loan Parties shall either instruct the taxing authority to forward a copy of the tax notice to BDC or shall deliver a copy to BDC upon receipt. Funds in this reserve account will earn interest in accordance with BDC's policy then in effect and will be held by BDC as Security for the Loan. After Default, BDC will not have any ongoing responsibility to pay the taxes and any funds in the reserve account may be applied towards any amounts owing to BDC.
9. Promptly furnish to BDC such information, reports, certificates, and other documents concerning any Loan Party as BDC may reasonably request from time to time, including, but not limited to, information regarding the ownership and control of any Loan Party.
10. Not, without the prior written consent of BDC:
  - a. Change the nature of their business;
  - b. Change their jurisdiction of incorporation, formation or continuance, or the jurisdiction in which their chief place of business, chief executive office or registered office is located;
  - c. Amalgamate, merge, acquire or otherwise restructure their business, or create an affiliated company, or sell or otherwise transfer a substantial part of their business or any substantial part of their assets, or grant any operating license; or
  - d. Permit or allow any transaction, including but not limited to the sale, transfer, or issuance of an Equity Interest, that would result in a Person who is not a Loan Party acquiring:
    - (i) a direct Equity Interest in a Loan Party; or
    - (ii) an indirect Equity Interest in a Loan Party of 25% or more. For the purposes of this subparagraph (ii), an indirect Equity Interest means an Equity Interest held by a Person through one or more intermediaries.

This paragraph (d) shall not apply to the sale, transfer, or issuance of any Equity Interests in a Public Issuer.

11. When a Loan Party is Public Issuer:

- a. deliver a notice to BDC for its review and approval, within 5 business days after any Person or group of Persons, acting jointly or in concert, directly or indirectly, acquire Equity Interests resulting in the ownership of 20% or more of the Equity Interests of such Public Issuer. This Public Issuer Notice shall contain the names and addresses of any Person or group of Persons that acquired such Equity Interests together with the details of the Equity Interests so acquired; and
- b. repay the Loan in full, including accrued interest, costs and any other outstanding amounts, within 60 days from the date on which BDC notifies the Borrower in writing that BDC, in its sole discretion, is not satisfied with the issuance or transfer of Equity Interests identified in the notice required by paragraph (a) above.

**Additional Covenants: Ineligible Activities**

In addition to the above list of Covenants, no Loan Party shall engage in, or permit their respective shareholders, directors or officers to engage in, or permit their premises to be used by a tenant or other Person for, any activity which BDC, from time to time, deems ineligible, including without limitation any of the following ineligible activities:

- a. businesses that: 1) are engaged in or associated with illegal activities or fail to comply with applicable Canadian legislation that restricts dealings, including trade, between Canadians and governments or

residents of countries that are proscribed by the Canadian government or illegally trade in proscribed goods; 2) violate applicable laws with respect to human rights, labour, the environment and anti-corruption; or 3) violate standards with respect to public health and safety or professional conduct, in each case as prescribed by applicable law or by a professional governing body;

- b. businesses that promote violence, incite hatred, or discriminate on any basis protected under the Canadian Human Rights Act; or
- c. businesses that operate any form of sexually exploitative business or disseminate media content that is sexually explicit.

BDC's finding that there is an ineligible activity shall be final and binding between the parties and will not be subject to review. The prohibitions set out in this section shall also apply to any entity that directly or indirectly controls, is controlled by, or that is under the common control with, any Loan Party.

#### SECTION IV - EVENTS OF DEFAULT

1. Any Loan Party fails to pay any amount owing under or pursuant to the Loan Documents.
2. Any Loan Party fails to satisfy, comply with, or perform any covenant or other obligation under the Loan Documents.
3. Any Loan Party is in default under any other agreement with BDC or any third party for the granting of a loan or other financial assistance and such default remains unremedied or unwaived after any cure period provided in such other agreement.
4. Any representation or warranty made by any Loan Party herein or in any other Loan Document is breached, false or misleading in any material respect, or becomes at any time false.
5. Any schedule, certificate, financial statement, report, notice or other writing furnished by or on behalf of any Loan Party to BDC in connection with the Loan is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified.
6. The occurrence of a Material Adverse Change.
7. Any Loan Party becomes insolvent or generally fails to pay, or admits in writing its inability or refusal to pay its debts as they become due; or any Loan Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver or other custodian for such Loan Party or any property thereof, or makes a general assignment for the benefit of creditors; or, in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for any Loan Party or for a substantial part of the property of such Loan party; or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is commenced in respect of any Loan Party; or any Loan Party takes any action to authorize, or in furtherance of, any of the foregoing.
8. Any Loan Party ceases or threatens to cease to carry on all or a substantial part of its business.
9. The death of any individual Loan Party or any person that Controls any Loan Party.
10. The occurrence of a Change of Control of a Loan Party without BDC's written consent.
11. Any Loan Party, who is a Public Issuer, fails to deliver a Public Issuer Notice when required to do so, or fails to repay the Loan in full, including accrued interest, costs and any other outstanding amounts, within 60 days after receiving written notice that BDC is not satisfied with the Public Issuer Notice.
12. Any Loan Party, any Person who Controls a Loan Party, or any officer, director, or shareholder of a Loan Party, is in violation of any applicable law relating to terrorism or money laundering, including the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).
13. Any Loan Party, any Person who Controls a Loan Party, or any officer, director, or shareholder of a Loan Party, is in violation of trade and economic sanctions imposed by the Parliament of Canada.

## SECTION V - GENERAL TERMS AND CONDITIONS

Each Loan Party agrees to the following additional provisions:

### **Other Available Interest Rate Plans**

Upon acceptance of the Letter of Offer, the Borrower can select one of BDC's other available fixed or floating interest rate plans. If the selection is made before the Acceptance Date, there is no fee and the selected plan shall be based on BDC's Base Rate in effect on the Loan Authorization Date. If the selection is made after the initial Acceptance Date, there is a fee and an Interest Differential Charge may apply. The new rate shall become effective on the date on which the written request is received by BDC. However, in the event of a period of increased interest rate volatility, which will be determined by a fluctuation of greater than 0.5% during the same transaction day of the yield to maturity of the five-year Canada bond benchmark, BDC reserves the right to suspend the borrower's right to switch from a floating interest rate plan to a fixed interest rate plan.

### **Standby Fee Date Change When Switching From Floating to Fixed Rate Plans – Not applicable to Equipment Line Loans**

If the Borrower selects a floating rate interest plan at the time the Letter of Offer is accepted and subsequently switches to a fixed interest rate plan, the Standby Fee applicable to the Loan shall become payable as follows:

- a. if the change is made within 2 months after the Loan Authorization Date, the Standby Fee shall become payable 2 months after the Loan Authorization Date; or
- b. if the change is made more than 2 months after the Loan Authorization Date, the Standby Fee shall become payable on the date the new fixed interest plan takes effect.

There will be no change to the Standby Fee payment schedule if the Borrower elects to switch from a fixed rate interest plan to a floating rate interest plan.

### **Interest Adjustment Date**

Provided no Default has occurred and is continuing, prior to each Interest Adjustment Date, BDC shall advise the Borrower of BDC's Base Rates then in effect for the fixed interest rate plans available. Not later than on the current Interest Expiration Date, the Borrower shall select a new interest rate plan. If the Borrower selects a new fixed interest rate plan, effective on the Interest Adjustment Date, the interest rate for the Loan shall be BDC's Base Rate applicable to the fixed interest rate plan selected by the Borrower adjusted by the Variance which new rate shall be applicable until the next Interest Expiration Date. If the Loan is on a fixed interest rate plan with blended payments of principal and interest, the repayment schedule shall be adjusted on each Interest Adjustment Date. If the Borrower has not advised BDC in writing of its choice before an Interest Adjustment Date, the Loan shall automatically switch to BDC's floating interest rate plan on the Interest Adjustment Date with an interest rate being BDC's Floating Base Rate as adjusted by the Variance. Outstanding principal for blended payment loans shall then be divided in equal monthly instalments to be paid until Maturity Date.

In the event BDC should demand repayment of the Loan by reason of an Event of Default, any fixed interest rate applicable at the time of demand shall continue to apply to the Loan until full repayment and shall not be adjusted at the next Interest Adjustment Date.

### **Pre-Authorized Payment**

All payments provided for in the Letter of Offer must be made by pre-authorized payments from the Borrower's bank account. The Borrower shall sign all documentation required to that effect and provide a sample cheque marked void.

### **Application of Payments**

All payments shall be applied in the following order:

1. any prepayment indemnity (including the monthly interest and Interest Differential Charge)
2. protective disbursements;
3. standby fees (arrears and current);
4. arrears, in the following order: transaction fees, administration fees, management fees, interest and principal;
5. current balances, in the following order: transaction fees, management fees, interest and principal;
6. cancellation fees;
7. credits to the tax reserve account and asset maintenance and upgrade account, if applicable; and
8. other amounts due and payable.

Other than regular payments of principal and interest, BDC may apply any other monies received by it, before or after Default, to any debt the Borrower may owe BDC under or pursuant to the Letter of Offer or any other agreement and BDC may change those applications from time to time.

#### Consent to Obtaining Information

The Loan Parties hereby consent to BDC:

- a. collecting personal and business information and using such information for business, analytics and marketing purposes as described in the *Policy on confidentiality and use of personal and business information* (the "Policy") available at [bdc.ca/en/confidentiality](http://bdc.ca/en/confidentiality);
- b. sharing the personal and business information with BDC service providers only for them to provide the services BDC asks from them, such as processing credit verification, background checks and other matters explained in the Policy; and
- c. sharing the personal and business information with authorities in case of fraud or suspected fraud, and with other financial institutions to prevent or control fraud or when there is a breach of a financing agreement with BDC.

#### Notices

Notices must be in writing and may be given in person, or by letter sent by fax, mail, courier or electronically; if to the Borrower, at the Borrower's address above or such other addresses as the Borrower may advise BDC in writing, or if to BDC, at BDC's address above.

#### Joint and Several Liability

Where in the Loan Documents, any covenant, agreement, warranty, representation or obligation is made or imposed upon two or more Persons or a party comprised of more than one Person, each such covenant, agreement, warranty, representation or obligation shall be deemed to be and be read and construed as a joint and several (solidary in Quebec) covenant, agreement, warranty, representation or obligation of each such Person or party, as the case may be. Without limiting the generality of the foregoing, each Loan Party shall be jointly and severally (solidarily) liable with each other to BDC for the full performance of all obligations under the Loan Documents in accordance with the provisions thereof.

#### Anti-Money Laundering/Know Your Client

Each Loan Party acknowledges that, pursuant to prudent banking practices in respect of "knowing your client", BDC, in compliance with its internal policies, is required to verify and record information regarding the Loan Parties, their directors, officers, Persons holding direct or indirect Equity Interests in a Loan Party, and other Persons in Control of each Loan Party. Each Loan Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by BDC or any prospective assignee or other financial institution participating in the Loan with BDC, in order to comply with internal policies and applicable laws on anti-money laundering and anti-terrorist financing.

#### Confidentiality

The Loan Parties shall not disclose the contents of this Letter of Offer to anyone except its professional advisors.

#### Changes in Accounting Standards

In the event that a Loan Party adopts any changes in its accounting standards which have an effect on any provision in the Letter of Offer relying on financial statement calculations, BDC may amend such provision to reflect the original intent of the provision.

# EXHIBIT C

**Properties**

*PIN* 07082 - 0016 LT *Interest/Estate* Fee Simple  
*Description* PT LTS 14, 15 & 16 , PL 90 , AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292 ;  
 BURLINGTON  
*Address* 1391 ONTARIO ST  
 BURLINGTON

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* 1391 ONTARIO ST. INC.  
*Address for Service* 1 King Street West, 10th Floor  
 Hamilton, Ontario, Canada, L8P 1A4

A person or persons with authority to bind the corporation has/have consented to the registration of this document.  
 This document is not authorized under Power of Attorney by this party.

**Chargee(s)****Capacity****Share**

*Name* BUSINESS DEVELOPMENT BANK OF CANADA  
*Address for Service* 4145 North Service Road, Suite 401  
 Burlington, Ontario  
 L7L 6A3

**Statements**

Schedule: See Schedules

**Provisions**

*Principal* \$2,446,000.00 *Currency* CDN  
*Calculation Period*  
*Balance Due Date* On Demand  
*Interest Rate* See Schedule  
*Payments*  
*Interest Adjustment Date*  
*Payment Date*  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms* 20011  
*Insurance Amount* Full insurable value  
*Guarantor*

**Signed By**

Alexander Joseph Charles Smith 1 James Street South 14th flr PO acting for  
 Box 926 Chargor(s) Signed 2023 01 13  
 Hamilton  
 L8N 3P9

Tel 905-523-1333

Fax 905-523-5878

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

SCARFONE HAWKINS LLP 1 James Street South 14th flr PO Box 2023 01 13  
 926  
 Hamilton  
 L8N 3P9

Tel 905-523-1333

Fax 905-523-5878

**Fees/Taxes/Payment**

Statutory Registration Fee	\$69.00
Total Paid	\$69.00

## SCHEDULE A

## LAND REGISTRATION REFORM ACT

## Payment Provisions

You charge the property covered by the Charge as security for payment to the Chargee, Business Development Bank of Canada, of all Secured Obligations, as defined in the Standard Charge Terms described in the electronic form of charge to which this document forms a schedule, including the following:

- (i) all present and future debts, liabilities and obligations now or hereafter owing by the Chargor to the Chargee including any and all principal advances and re-advances made by the Chargee to the Chargor after the repayment of any or all principal amounts, provided that the total principal amount secured shall not at any time exceed the principal amount referred to in the electronic form of charge to which this document forms a schedule; and,
- (ii) interest on the amounts payable under paragraph (i) above at the rate equal to the floating base rate of Business Development Bank of Canada for commercial and industrial loans denominated in Canadian dollars announced from time to time, plus 10.00% per year, calculated monthly and payable monthly, both after as well as before maturity, default and/or judgment. If the Chargor and the Chargee have agreed in writing in any agreement referred to in the "Secured Obligations" described in paragraph (i) above, or in any other agreement, that a different interest rate will apply to all or part of the debts and liabilities described in paragraph (i) above, then that different rate will apply.

## STANDARD CHARGE TERMS

FILED BY: BUSINESS DEVELOPMENT BANK OF CANADA

AS

MORTGAGEE

FILING DATE - January 30<sup>th</sup>, 2001

FILING NUMBER - 20011

The following set of standard charge terms is considered to be included in and form a part of every Charge/Mortgage of Land in which this set is referred to by its filing number as provided in Section 9 of the *Land Registration Reform Act (Ontario)*

## CONTENTS

1. Interpretation	8. Assignment of Rights of Indemnity
2. Grant of Security	9. Mortgages of Special Interest
3. Discharge of Mortgage	10. Events of Default
4. General Representations	11. Enforcement
5. General Covenants	12. Other Rights
6. Environmental Matters	13. Preservation of Mortgage and Other Security
7. Assignment of Rents etc.	14. Miscellaneous

For good and valuable consideration, the receipt and sufficiency of which you hereby acknowledge, you warrant, represent, covenant and agree with us as follows:

## 1. INTERPRETATION

1.1 **Definitions.** In this Mortgage (as hereinafter defined):

- (a) "**Assigned Leases**" means every existing and future Lease and any guarantee of any such Lease;
- (b) "**Assigned Rents**" means all rents, benefits and other monies payable from time to time under the Assigned Leases;
- (c) "**Charge**" means any mortgage, charge (fixed or floating), pledge, lien (statutory or otherwise), assignment, lease, security interest, title retention agreement, trust, easement, restrictive covenant, lease, registered instrument or other encumbrance of any nature however arising;
- (d) "**Environmental/Hazardous Materials Claims**" means enforcement or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental/Hazardous Materials Laws, together with claims made or threatened by any third party against you or in respect of the Mortgaged Property relating to the environment, health, safety, any Wastes/Hazardous Materials or any Environmental/Hazardous Materials Laws;
- (e) "**Environmental/Hazardous Materials Laws**" means laws, by-laws, rules, ordinances, regulations, notices, approvals, orders, licenses, permits, standards, guidelines and policies from time to time of any level of government or other authorized agency relating to the environment, health, safety or any Wastes/Hazardous Materials;
- (f) "**Event of Default**" means any event referred to in paragraph 10.1 hereof, or otherwise herein, as constituting an Event of Default;
- (g) "**Improvements**" means each and every building, structure, erection, improvement, fixture or replacement thereof affixed or attached in, on, or under the Mortgaged Property or any part thereof which now or hereafter constitutes part of Your Interest;

- (h) "**Lease**" means a lease, sub-lease, agreement to lease or sub-lease, right of use or occupation, licence or sub-license, or other agreement as to the use or occupation affecting the Mortgaged Property, or any part thereof, as the case may be, and includes any renewal, replacement or extension of any of the foregoing;
- (i) "**Mortgage**" means the Mortgage Form and these charge terms read together, as amended and extended from time to time;
- (j) "**Mortgage Form**" means the Form 2 Charge/Mortgage of Land under the *Land Registration Reform Act* (Ontario), as amended or replaced from time to time, which refers to these charge terms and is executed by you and all schedules and addenda attached to such Form 2 and "Mortgage Form" includes a Mortgage Form prepared and registered in electronic format and all schedules thereto under Part III of the said Act;
- (k) "**Mortgaged Property**" means the land(s) described or referred to in box 5 of the Mortgage Form (or in the appropriate field as set out in any Mortgage Form prepared in electronic format) together with the Improvements, appurtenances and every other thing referred to in the definition of "land" in Section 1 of the *Land Registration Reform Act* (Ontario), as amended or replaced from time to time, and whether now or hereafter existing or acquired, in connection with such land(s);
- (l) "**Mortgagee**" means the Chargee shown in box 14 of the Mortgage or in the appropriate field as set out in any Mortgage Form prepared in electronic format;
- (m) "**Mortgagor**" means the Chargor shown in box 11 of the Mortgage or in the appropriate field as set out in any Mortgage Form prepared in electronic format;
- (n) "**Permitted Charges**" means any:
  - (i) Charges that are expressly subordinate in priority to the Mortgage and any present or future advances under it;
  - (ii) Charges in our favour; and
  - (iii) Charges approved in writing by us prior to the execution of the Mortgage or the creation of the Charge;
- (o) "**Receiver**" includes a receiver, manager, receiver and manager or receiver-manager however appointed;
- (p) "**Secured Obligations**" means the aggregate of:
  - (a) the principal amount set out in the Mortgage Form;
  - (b) all interest thereon at the Interest Rate set out in the Mortgage Form;
  - (c) any amount, cost, charge and expense which has been added to the Secured Obligations pursuant to the Mortgage;
  - (d) any other amount, cost, charge and expense otherwise due and payable to the Mortgagee hereunder or secured by the Mortgage;
  - (e) interest at the Interest Rate set out in the Mortgage Form on all amounts, costs, charges and expenses payable in accordance with paragraphs (c) and (d) above, which amounts, costs, charges, expenses and interest shall be treated, as to the payment of interest thereon, as principal;
  - (f) compound interest on all overdue interest, calculated at the Interest Rate set out in the Mortgage Form, both before and after default, demand, maturity and judgment until paid; and
  - (g) all other present or future debts, liabilities or obligations of the Mortgagor hereunder, or under any letter of offer, commitment letter, guarantee, or any other agreement with the Mortgagee, (including all future advances and re-advances, interest, and interest on overdue interest), whether direct or indirect, absolute or contingent, joint or several, matured or not, extended or renewed, wherever and however incurred, of whatsoever nature or kind, whether or not provided for herein, and whether owed by the Mortgagor to the Mortgagee, as principal, guarantor, indemnitor or otherwise.

- (q) "**Taxes**" means all taxes, assessments, rates, duties, levies, government fees, utility charges, claims and dues levied, assessed or imposed on Your Interest or on you in respect of Your Interest;
- (r) "**Wastes/Hazardous Materials**" means wastes, materials and substances the storage, manufacture, disposal, treatment, generation, use or transport of which is prohibited, controlled or licensed under any Environmental/ Hazardous Materials Laws, or the remediation or release of which into the environment is likely, immediately or in the future, to cause harm or degradation to any of the Mortgaged Property or the environment, including contaminants, pollutants, corrosive substances, toxic substances, special wastes, substances deleterious to fish or wildlife, explosives, radioactive materials, asbestos, urea formaldehyde, and compounds known as chlorobiphenyls;
- (s) "**Your Interest**" means:
  - (i) the estate, right, title and interest in and to the Mortgaged Property as set out in box 7 of the Mortgage Form (or, in the case of a Mortgage Form which is prepared in electronic format, the estate, right, title and interest described in the appropriate field therein) which, unless the Mortgage Form otherwise expressly provides, includes both the legal and beneficial estate, right, title and interest in and to the Mortgaged Property; and
  - (ii) any other estate, right, title or interest in and to the Mortgaged Property hereafter acquired by you, or in your name.

1.2 **Our Certificate Conclusive.** Every certificate signed by one of our representatives purporting to show the amount of monies at any particular time due and payable under this Mortgage shall, in the absence of manifest error, be conclusive evidence as against you of the amount due and payable at such time under this Mortgage.

1.3 **Invalidity.** The invalidity or unenforceability of the whole or any part of any paragraph of this Mortgage shall not affect the validity or enforceability of any other paragraph or the remainder of such paragraph.

1.4 **Headings.** The headings used in this Mortgage have been inserted for convenience of reference only and do not define, limit, alter or enlarge the meaning of any provision of this Mortgage.

1.5 **Jurisdiction.** This Mortgage will be governed by and construed in accordance with the laws of Ontario.

1.6 **Time of the Essence.** Time shall be of the essence of this Mortgage.

1.7 **Consolidation.** The doctrine of consolidation shall apply to this Mortgage.

1.8 **Interpretation.** Whenever in this Mortgage the singular or neuter pronoun is used the same shall be respectively construed as the plural, masculine, feminine or body corporate as the context may require.

1.9 **Joint and Several Liability.** If you are comprised of more than one person, the liability of such persons is joint and several and every reference in this Mortgage to you shall be construed as meaning each person who executed this Mortgage as a mortgagor as well as all of them.

1.10 **Conflict with Mortgage Form.** If there is any conflict between these charge terms and any express terms in the Mortgage Form, the provisions of the express terms in the Mortgage Form shall prevail.

1.11 **Conflict with Agreement.** If you have entered into a letter of offer, commitment letter, loan agreement or guarantee (the "Agreement") with us dealing with, or relating to, the Secured Obligations, or any of them, then, in the event of any conflict between any term of this Mortgage and any term of the Agreement, the term of the Agreement shall prevail.

1.12 **Enurement.** This Mortgage shall enure to the benefit of and be binding upon you and us and our respective heirs, personal representatives, successors and permitted assigns.

**2. GRANT OF SECURITY**

2.1 **Mortgage.** As security for payment and performance of the Secured Obligations, you hereby charge and mortgage Your Interest to us, subject to Permitted Charges and the

provisions hereof, and, subject to paragraph 3.1, you release all claims to Your Interest to us.

2.2 **Title.** If you are not the beneficial owner of Your Interest or any part of Your Interest, you have the right and authority to grant this Mortgage as a charge against both the legal and beneficial title to all of the Mortgaged Property.

### 3. DISCHARGE OF MORTGAGE

3.1 This Mortgage will be redeemed and you will be entitled to a discharge of this Mortgage only upon the latest of:

- (a) full payment and satisfaction of the Secured Obligations;
- (b) our receipt of your written request for a discharge of this Mortgage; and
- (c) our receipt of payment of an administrative fee, to be fixed by us, for the preparation, execution and/or registration of a discharge of this Mortgage.

No discharge will be effective unless it is executed by us.

We shall have no obligation to provide any partial release of this Mortgage from any of the Mortgaged Property except as provided by statute, the Mortgage Form or the Agreement.

You will pay an administrative fee, to be fixed by us, for the preparation or execution of any partial release of this Mortgage. No partial release of any of Your Interest will affect our rights under this Mortgage with respect to the remainder of Your Interest.

We shall have a reasonable time after payment of the Mortgage in full within which to execute a discharge of this Mortgage and deliver it to you. If electronic registration is available, we will either execute a discharge of this Mortgage and deliver it to your solicitor or we will register the discharge on your behalf and will provide either you or your solicitor with confirmation of registration.

### 4. GENERAL REPRESENTATIONS AND WARRANTIES

4.1 **Title.** You own and possess and have good title in fee simple to all of Your Interest and you will defend Your Interest for our benefit against the claims and demands of all other persons.

4.2 **Authority to Charge.** You have good right, full power and lawful authority to enter into this Mortgage, to create the Mortgage and Charge provided for herein and to charge all of Your Interest to us subject only to Permitted Charges.

4.3 **Quiet Possession.** On default we shall be entitled to enter into and take possession of, and thereafter shall have quiet enjoyment of, Your Interest free from all Charges, except Permitted Charges.

4.4 **Permitted Charges.** You have done no act to encumber Your Interest, save for Permitted Charges.

4.5 **No Litigation.** There is no litigation, governmental proceeding, complaint, prosecution or investigation, with respect to environmental matters or otherwise, commenced or pending against you or otherwise affecting Your Interest and you agree to promptly notify us of any such future litigation, proceeding, complaint, prosecution or investigation.

4.6 **Construction Liens.** You have fully and completely complied and will comply with all requirements of the *Construction Lien Act* (Ontario) as amended or re-enacted from time to time so as to preserve the priority of the Mortgage and all advances thereunder to any claim for Construction Lien.

4.7 **General.** Each statement made by you in this Mortgage is true, complete and accurate and no investigation by us will diminish our right to rely on such statements, all of which will survive until we have discharged this Mortgage.

### 5. COVENANTS

5.1 **Secured Obligations.** You will pay, observe, perform and satisfy all of the Secured Obligations as and when the same are required to be paid, observed, performed and satisfied.

5.2 **Taxes.** You will promptly pay all Taxes when due and deliver to us a receipt therefor forthwith upon each payment.

5.3 **Other Charges.** If this Mortgage is now or at any time hereafter subject to any Permitted Charge(s):

- (a) you will duly observe, perform and comply with the covenants, provisos and agreements contained in each Permitted Charge (including the punctual payment of any money payable under the same) and you agree to indemnify and save us harmless from and against any and all loss and liability thereunder; and
- (b) any default under any Permitted Charge shall be deemed to be an Event of Default hereunder.

5.4 **No Charges.** You will not create, assume or permit the existence of any Charge affecting any of Your Interest except for Permitted Charges, but nothing herein shall be constituted as our granting any priority to any such Permitted Charges.

5.5 **Miscellaneous Fees.** You shall pay to us on demand the following, all of which shall constitute a Secured Obligation and be payable immediately with interest at the highest rate of interest then in effect with respect to any part of the Secured Obligations, until paid:

- (a) a reasonable servicing fee to process each application for approval as herein contemplated; and
- (b) all fees, costs, charges and expenses (including legal fees and expenses on a solicitor and his own client basis, Receiver's, bailiff's or other fees, commissions and expenses, and any fine, cost or penalty we may be obliged to incur by reason of any statute, order or direction by competent authority) incurred by us, or on our behalf, whether before or after court proceedings are commenced, in connection with:
  - (i) the preparation, issue, registration, modification and extension of this Mortgage, investigating title of the Mortgaged Property, recovering, collecting, procuring or enforcing payment or performance of the Secured Obligations, in any way enforcing or protecting the security of this Mortgage, or enforcing any of the terms of this Mortgage or otherwise exercising our rights and powers hereunder (including all of our travelling expenses and those of our employees and agents);
  - (ii) any inspection, appraisal, investigation or environmental audit of the Mortgaged Property or Your Interest;
  - (iii) any environmental rehabilitation, removal or repair necessary to protect, preserve or remediate the Mortgaged Property or Your Interest; and
- (c) all other amounts paid or incurred by us generally in any other measure or proceeding taken by us or on our behalf to realize or collect the Secured Obligations or to defend or perfect the title of Your Interest, or to protect and preserve the Mortgaged Property.

5.6 **Maintain Insurance.** While this Mortgage is in effect you will:

- (a) maintain or cause to be maintained insurance on Your Interest with a reputable insurer, of kinds, for amounts and payable to such person or persons, all as we may require including, without restricting the generality of the foregoing,
  - (i) insurance against loss or damage by fire to the Improvements in an amount of not less than full insurable value on a replacement cost basis; and
  - (ii) insurance against loss or damage to the Improvements on an all-risks basis.
- (b) cause the insurance policy or policies required by this Mortgage to name us as a loss payee as our interest may appear in respect of Your Interest, and include a standard mortgage clause or a mortgage endorsement;

- (c) pay all premiums respecting such insurance, and deliver all polices to us if required;
- (d) upon request, immediately assign, transfer and deliver over to us each and every policy or policies of insurance and all receipts pertaining to same;
- (e) on the happening of any loss or damage to the Mortgaged Property or any of Your Interest, immediately notify and furnish to us, at your expense, all necessary proofs and do all necessary acts to enable us to obtain payment of any insurance monies otherwise payable to you, but nothing shall limit our right to submit to the insurer a proof of loss on our own behalf; and
- (f) authorize and direct the insurer under any required policy of insurance to include our name as loss payee on any policy of insurance and on any cheque or draft which may be issued respecting a claim settlement under and by virtue of such insurance, and the production by us to any insurer of a certified copy of this Mortgage shall be its complete authority for so doing.

If you fail to maintain insurance as required, we may, but shall not be obliged to, maintain or effect such insurance coverage, or so much insurance coverage as we consider necessary for our protection. If proceeds of any required insurance become payable, we may, in our absolute discretion, apply these proceeds to the Secured Obligations as we see fit or release any insurance proceeds to you to repair, replace or rebuild, but any release of insurance proceeds to you shall not operate as a payment on account of the Secured Obligations or in any way affect this Mortgage or the Charges created hereby. To ensure that we may apply such insurance monies in the manner herein contemplated, you also assign and release to us all of your rights to receive the insurance monies.

**5.7 Use, Maintenance and Alteration of Improvements.** You will:

- (a) promptly observe, perform, execute and comply with all laws, by-laws, rules, requirements, orders, directions, ordinances and regulations of every governmental, municipal and civil authority or agency concerning any part of the Mortgaged Property that constitutes part of Your Interest;
- (b) not permit or commit any act of waste on any part of the Mortgaged Property that constitutes part of Your Interest;
- (c) not change, or agree to any change of, the present use of Your Interest without our prior express written consent;
- (d) keep all improvements in good condition and repair;
- (e) not permit any improvements to be unoccupied or unused without our prior express written consent;
- (f) carry on your business in a proper, business-like manner and maintain proper books of account;
- (g) not permit any of the following activities to occur in, on or under the Improvements:
  - (i) businesses that are sexually exploitative or that are inconsistent with generally accepted community standards of conduct and propriety, including those that feature sexually explicit entertainment, products or services;
  - (ii) businesses trading with countries that are proscribed by the Federal Government;
  - (iii) businesses which operate as a separate and sole entity nightclubs, bars, lounges, cabarets, casinos, discotheques and similar operations; or
  - (iv) businesses that are engaged in or associated with illegal activities.

You also agree that if following the grant of this Mortgage your business or the business of a tenant of yours fails to comply with this paragraph, the same may, at our discretion, constitute an Event of Default.

5.8 **Right to Inspect and Repair.** We and any of our agents, may at such time and from time to time, as we deem necessary and without the concurrence of any person, enter upon any part of the Mortgaged Property and make arrangements for completing the construction, repairing or putting in of Improvements, or for inspecting, appraising, taking care of, leasing, collecting the rents of, and generally managing any or all of Your Interest, as we may deem expedient, including the inspection and copying of your books and records, whether located at the Mortgaged Property or elsewhere. Further, you consent to our contacting and making enquiries of your lessors/lessees, as well as environmental officials, assessors, municipal authorities and any taxing body.

5.9 **No Dividends, etc.** If you are a corporation, you will not, without our prior written consent, issue, purchase or redeem any of your shares, permit any of your shareholders to sell, transfer or dispose of their shares, declare or pay any dividends on any of your issued shares, or amalgamate, merge, consolidate or enter into any business combination with any other person.

5.10 **Spousal Consent.** If you are a spouse, your spouse if so named in the Mortgage Form, consents to the transaction evidenced by this Mortgage and releases all his or her interest in the Mortgaged Property to the extent necessary to give effect to our rights hereunder.

5.11 **Change in Status.** Immediately after any change or event affecting any of the following, namely:

- (a) Your spousal status;
- (b) the qualification of the land as a family residence within the meaning of Part II of the *Family Law Act* (Ontario); and
- (c) the legal title or beneficial ownership of the land,

you will advise us accordingly and furnish us with full particulars thereof, the intention being that we shall be kept fully informed of the names and addresses of the owner or owners for the time being of the land and of any spouse who is not an owner but who has a right of possession in the land by virtue of Section 19 of the *Family Law Act*. In furtherance of such intention, you covenant and agree to furnish us with such evidence in connection with any of (a), (b) and (c) above as we may from time to time request.

5.12 **Perfection of Security.** You will do all things required in order that our security under this Mortgage is constantly perfected.

5.13 Every part, lot or unit into which the Mortgaged Property is or may hereafter be divided does and shall stand charged with the Secured Obligations and no person shall have any right to require the moneys hereby secured to be apportioned upon or in respect of any such part, lot or unit.

## 6. ENVIRONMENTAL MATTERS

6.1 **No Environmental Risks.** You represent and agree that:

- (a) you are not aware of any environmental risks or liabilities in connection with the Mortgaged Property which have not been disclosed to us and approved by us in writing;
- (b) the operations on the Mortgaged Property are and will be kept in compliance with all Environmental/Hazardous Materials Laws and you will ensure your staff is trained as required for such purpose;
- (c) you have an environmental emergency response plan and all your officers and employees are familiar with that plan and their duties under it;
- (d) you possess and will maintain all environmental licences, permits and other governmental approvals as may be necessary for the conduct of your business;
- (e) the Mortgaged Property is and will remain free of environmental damage or contamination;
- (f) you will provide us with copies of all communications from or to any person relating to Environmental/Hazardous Materials Laws and any Environmental/Hazardous Materials Claims in connection with the Mortgaged Property that become known to you, and all environmental studies or assessments prepared for you, and you consent to us contacting and making enquiries of environmental officials or assessors;

- (g) you will advise us immediately upon becoming aware of any environmental problem relating to the Mortgaged Property or your business;
- (h) without limiting the above, you will not install in, on or under the Mortgaged Property storage tanks for any Wastes/Hazardous Materials without our prior written consent and only upon full compliance with our requirements and the standards and requirements of all boards and governmental authorities having jurisdiction over the Mortgaged Property, and your activities and assets.

6.2 **Indemnity.** You agree to assume and be responsible for any and all environmental liabilities relating to the Mortgaged Property, including any liability for the clean-up of any Wastes/Hazardous Materials in, on or under the Mortgaged Property, and you agree to protect, save harmless and indemnify us, and any Receiver, and our respective directors, officers, employees and agents, direct and indirect successors and assigns, and our interest in the Mortgaged Property, from and against any and all claims, demands, liabilities, losses, damages and expenses, including legal fees and expenses, suffered by any of such persons arising out of or in connection with any and all environmental liabilities relating to the Mortgaged Property. Your liability will arise upon the earlier of the discovery of any Wastes/Hazardous Materials, and the institution of any Environmental/Hazardous Materials Claims, and will not be dependent upon the realization of any loss or damage or the determination of any liability. This indemnity and your liability hereunder will survive after this Mortgage and the Charges created hereby have been discharged.

## 7. ASSIGNMENT OF RENTS

7.1 As additional security for the payment and performance of the Secured Obligations, you hereby assign the Assigned Rents to us, together with the benefit of all covenants, rights and agreements contained in the Assigned Leases and you agree as follows:

- (a) to execute and deliver such further assignments, notices or other documents as may be required to render this assignment effective;
- (b) we are not obliged to collect any Assigned Rents, nor to comply with any covenant, agreement or term of any Assigned Lease;
- (c) the tenants shall pay the Assigned Rents as we may from time to time direct, and in the absence of direction, may pay them to you;
- (d) none of the Assigned Leases or your rights thereunder including the right to receive the Assigned Rents, has been or will be amended, assigned, encumbered, terminated, discounted or anticipated without our prior written consent;
- (e) no tenant, sub-tenant, licensee or sub-licensee, as the case may be, may make, and you may not accept, a prepayment of Assigned Rents without our prior written consent and where any such person under any Assigned Lease entered into prior to this Mortgage has a contractual right to prepay Assigned Rents, such prepayment will, if made, be paid to us and applied as prepayment on the Secured Obligations or any of them, or held as security for the Secured Obligations, as we may determine, unless we have, in writing, waived our right to receive such prepayment;
- (f) there is no existing default in payment of Assigned Rents or otherwise under any of the Assigned Leases by any of the parties thereto and no outstanding dispute under any of the Assigned Leases;
- (g) you will observe and perform all of your obligations under each of the Assigned Leases and deliver to us a true copy of each of the Assigned Leases upon demand;
- (h) all Assigned Leases made hereafter will contain terms and conditions and be with tenants, sub-tenants, licensees or sub-licensees (as the case may be), which are not less favourable or desirable to you than those which a prudent landlord would expect to receive for the premises to be leased or subleased. Without limiting the foregoing, each such lease shall contain a covenant by the tenant, in form satisfactory to us, to attorn to us as tenant on demand made after occurrence of an Event of Default, for the balance of the term of the tenant's lease and on the same terms and conditions as are contained in the lease. The benefit of such covenant is and is hereby deemed to be assigned by you to us as additional and separate security to the other security created by the Mortgage including the Assignment of Rents and Assignment of Leases, for payment and performance of the Secured Obligations, and may be enforced by us by demand as aforesaid. We shall have no obligation, however, to enforce the covenant, nor shall our rights and remedies otherwise existing under the Mortgage or at law, including the Assignment of Rents and Assignment of Leases, be prejudiced by the taking, assignment or enforcement or non-enforcement of the covenant, except insofar as

enforcement, if any, would be inconsistent with such other rights and remedies including our right to immediate vacant possession or to demand that the tenant attorn to us as a yearly tenant.

- (i) nothing we do pursuant to this paragraph will deem us to be a mortgagee in possession of the Mortgaged Property and we need account only for such monies as we actually receive and we are entitled to charge a reasonable collection fee against such receipts for the collection thereof; and
- (j) we may recover and apply Assigned Rents to such part of the Secured Obligations as may be then due and unpaid without accelerating due dates of the Secured Obligations or any part thereof, or otherwise realizing on our security.

Provided that a discharge of this Mortgage under paragraph 3.1 will constitute a re-assignment to you of all rights and benefits assigned to us by this paragraph.

#### 8. ASSIGNMENT OF RIGHTS OF INDEMNITY

- 8.1 You hereby assign to us all and any rights of indemnification you now have, or which you may hereafter have, arising or existing by reason of or with respect to Your Interest and the Improvements to have and to hold, take and receive the same to our use absolutely, provided that a discharge of this Mortgage under paragraph 3.1 will constitute a re-assignment of such rights to you.

#### 9. MORTGAGES OF SPECIAL INTERESTS

- 9.1 **Leasehold.** If Your Interest is as a lessee, sub-lessee, licensee or sub-licensee (collectively a "lessee") of the whole or any portion of the Mortgaged Property pursuant to a Lease the representation set out in paragraph 4.1 above shall be deemed not to include the words "in fee simple", and:

- (a) you hereby demise, sub-lease and mortgage Your Interest and the Lease to us, by way of a sub-lease, except for the last day of the term of the Lease (the "reversion") which is excepted out of the Charge created by this Mortgage but which shall be deemed to be held by you in Trust for us to be assigned or disposed of as we or anyone claiming through us may direct, and we shall have power on any realization to appoint a new person as Trustee of the reversion;
- (b) if the Lease cannot be effectively charged without consent, any Charge intended to be created by this Mortgage upon Your Interest in the Lease shall not become effective until, but shall become effective immediately when, all consents necessary for the validity and effectiveness of such Charge have been obtained or waived by all appropriate persons;
- (c) you represent to us that the Lease is valid and in good standing, in full force and effect and unsurrendered, you have the right to mortgage Your Interest and the Lease to us, all rents or other months payable under the Lease have been paid and all other obligations under the Lease, whether of you or your landlord, have been performed or complied with;
- (d) you will promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by you under the Lease, including payment of rent;
- (e) you shall take no action or be guilty of any default which shall or may cause the Lease to be terminated or forfeited, or, without our prior written consent, surrender or give any notice which would have the effect of terminating, or permitting the termination of, the Lease;
- (f) you will promptly notify us in writing of any default or of any condition that with or without the passage of time or the giving of any notice might result in a default under, or the termination of, the Lease, and you will promptly cause a copy of each notice you receive under the Lease to be delivered to us;
- (g) in the event of any renewal, extension, replacement or substitution of the Lease being created, you will immediately so advise us, and provide us with particulars of the same and a true copy of the subject instrument, and when we request, you will execute such further instrument as we may require;
- (h) you will not during the continuance of this Mortgage, without our prior written consent, modify, alter or suffer or permit any modification or alteration of the Lease and any such altered or modified Lease shall be charged by this Mortgage;

- (i) you will promptly obtain from the lessor under the Lease and deliver to us, a certificate stating that the Lease is in full force and effect, is unmodified or modified as the case may be, that no notice of termination thereon has been served on you thereunder, stating the date to which the rent has been paid and stating whether or not there are any defaults thereunder and specifying the nature of such defaults, if any;
- (j) you shall not consent to the subordination of the Lease to any mortgage of the interest of the lessor (or leasehold interest of the sub-lessor) thereof in the Mortgaged Property;
- (k) you will at the proper time and times take such proceedings, and make, do and execute such acts, deeds, matters and things as may be requisite for obtaining a renewal of the Lease; and
- (l) you will hold the reversion and any renewals, extensions, replacements or substitutions thereof in trust for us and you will assign and dispose of the same in such manner as we may direct by notice in writing.

9.2 **Condominium.** If Your Interest is comprised of one or more condominium units and their appurtenant common interests in a condominium corporation registered pursuant to the *Condominium Act* (Ontario):

- (a) you shall comply with, observe and perform all provisions of the *Condominium Act* and its regulations and the Declaration, the by-laws, the rules and the regulations of the condominium corporation (the "Condominium Corporation");
- (b) you shall pay, on or before the due date thereof, each and every common expense charge, assessment, contribution, expense, fine or levy made by or on behalf of the Condominium Corporation in respect of Your Interest;
- (c) you will forward to us within 10 days of our demand a certificate in any form required by the *Condominium Act* certifying that no monies are owing by you to the Condominium Corporation;
- (d) you will not, without our prior written consent:
  - (i) assign any right, power, duty or obligation under the *Condominium Act* or the regulations created under it; or
  - (ii) give possession of the condominium units hereby charged to any person on the basis of an agreement for the purchase of the condominium units by the occupier or on the basis of a lease, sub-lease or assignment of lease for a term of three years or more;
- (e) you hereby grant to us your power and right to vote and to consent conferred on you by or under the *Condominium Act* in respect of all matters in relation to which the *Condominium Act* allows or provides that we may vote and consent, such power and rights being hereby assigned, transferred and set over unto us, and in respect of all other matters, you hereby irrevocably appoint us as your proxy to attend, speak and vote and consent for and on your behalf but in our discretion at all meetings of the Condominium Corporation; provided we shall not be obliged to vote or consent or to protect Your Interest and shall not be liable to you in connection with any consequences of our exercise or failure to exercise such right to vote or consent and that if we, by our authorized representative, agent or proxy have not given due notice of our intent to vote or consent, are not present at any duly called meeting of the Condominium Corporation of which we have received written notice, you may exercise the right to vote or consent. Our right to vote and consent includes the right to vote for or against any matter, and the right to dissent. You agree that neither this clause nor anything done by virtue of it shall render us a mortgagee in possession;
- (f) at least five days prior to each general meeting of the Condominium Corporation, you shall deliver to us written notice of the meeting specifying the place, date, hour and purpose of the meeting;
- (g) you hereby authorize any of our officers to apply at any time and from time to time during the term of this Mortgage to the Condominium Corporation:
  - (i) to have any bylaw for the time being in force governing the condominium units and their appurtenant common interests hereby mortgaged made available for inspection by such officer;

- (ii) for certification to us of the amount of any contribution determined as your contribution, the manner in which any contribution is payable, the extent to which you have paid any contribution and the amount of money expended by the Condominium Corporation on your behalf under the *Condominium Act* and not recovered by it; and
- (h) at our request, you will deliver to us copies of all notices, financial statements and other documents given by the Condominium Corporation to you.

9.3 **Vendor's Interest in Right to Purchase.** If Your Interest is the full fee simple subject to a right to purchase (in this clause called the "Right to Purchase"):

- (a) you transfer and assign to us absolutely all of your right, title and interest in and to the Right to Purchase and the monies now and hereafter owing thereunder, together with the full benefit of all powers and all covenants and provisions in the Right to Purchase, and full power and authority to use your name for enforcing the performance of the covenants and other matters and things contained in the Right to Purchase; and
- (b) you shall not accept any prepayment of the Right to Purchase other than in accordance with the terms thereof; provided that, if you are obliged to accept a prepayment, the amount thereof shall be paid to us as a prepayment on account of the Secured Obligations unless we waive such prepayment; and
- (c) we shall be under no obligation to commence action or take any proceeding or step to enforce the Right to Purchase and shall not be liable for any loss arising from any omission by us to take any such action, proceeding or step.

9.4 **Purchaser's Interest in Right to Purchase.** If Your Interest is as a purchaser's interest in an agreement for sale, then the Charge created hereby to secure the Secured Obligations is to attach to your increasing equity in the Mortgaged Property to the intent that when you obtain the fee simple to the Mortgaged Property, this Mortgage shall become a Mortgage of the full fee simple.

## 10. EVENTS OF DEFAULT

10.1 The occurrence of any of the following events will constitute an Event of Default:

- (a) if you fail, or threaten to fail, to observe or perform any covenant, agreement, condition or obligation in our favour, whether or not herein contained, including your failure to pay or perform any of the Secured Obligations when due;
- (b) if any representation, warranty or statement made to us either by you or on your behalf and whether or not combined herein or elsewhere, is not or ceases to be true;
- (c) if you, or any other obligant to us, or any other person liable, in respect of any of the Secured Obligations, ceases or threatens to cease to carry on your or its business, as the case may be, or any material part thereof or to sell all or substantially all of your or its assets, or becomes insolvent or files a proposal, a notice of intention to file a proposal, or an assignment for the benefit of creditors under applicable bankruptcy or similar legislation, or if a petition is filed, an order is made, a resolution is passed, or any other step is taken for your, or such other person's, bankruptcy, liquidation, dissolution, winding-up or reorganization or for any arrangement or composition of your or its debts or any protection from your or its creditors;
- (d) if you are in default under any other Charge of Your Interest or under any indebtedness other than Secured Obligations, or you permit to accelerate any indebtedness (other than Secured Obligations) owed by you to any creditor other than us;
- (e) if a Receiver, trustee or similar official of any of Your Interest is appointed;
- (f) if you are a corporation and any member or shareholder commences an action against you or gives notice of dissent to you in accordance with the provisions of any applicable legislation;
- (g) the holder of any other Charge on, or claim against, any of Your Interest does anything to enforce or realize on such Charge or claim, or any execution, sequestration, or other process becomes enforceable against you, or if a distress, seizure or similar process is levied upon or exercised against any of Your Interest;

- (h) if the lessor under any lease to you of any of the Mortgaged Property takes any step to or threatens to terminate such or otherwise exercise any of its remedies under such lease as a result of any default or alleged default by you under such lease;
- (i) if any of the Mortgaged Property is destroyed, substantially damaged, expropriated, or designated or considered for designation as a contaminated site;
- (j) if any permit, licence, certification, quota or order granted to or held by you is cancelled, reduced or revoked, or any order against you is enforced, with the effect of preventing your business from being carried on for more than five days or materially adversely changing the condition (financial or otherwise) of your business;
- (k) if you sell, transfer, convey, lease, assign, release, surrender or otherwise dispose of or part with possession of any of the Mortgaged Property or agree to do so; or
- (l) if you are in arrears of payment to any taxing authority;
- (m) if you cause or allow hazardous materials to be brought upon the Mortgaged Property or incorporated into any of your assets without our prior consent, or if you cause, permit or fail to remedy any environmental contamination upon, in or under the Mortgaged Property or fail to comply with any abatement or remediation order given by a responsible authority;
- (n) if you use any of the monies advanced hereunder for any purpose other than as declared to and agreed upon by us;
- (o) if we deem ourselves insecure or believe that the assets secured hereby are in danger of loss, damage or misuse; or
- (p) if there is a deemed Event of Default pursuant to this Mortgage.

## 11. ENFORCEMENT

11.1 **Enforcement.** Upon the occurrence of an Event of Default, at our option, our security will immediately become enforceable. To enforce and realize on the security created hereby we may take (or refrain from taking) any action permitted by law or in equity as we may deem expedient, including any of the following:

- (a) declare any or all of the Secured Obligations immediately due and payable;
- (b) enter upon, take possession of, occupy, use, preserve and protect Your Interest, with power to exclude you, your agents and employees therefrom;
- (c) maintain, repair, replace and complete Improvements in accordance with existing plans or otherwise as we, in our absolute discretion, may determine;
- (d) collect the Assigned Rents and other assets we hold as security for the Secured Obligations;
- (e) distrain for arrears of interest and for arrears of any other of the Secured Obligations in the same manner as if same were arrears of interest;
- (f) provided that the Event of Default has continued for at least 15 days, on at least 35 days notice in writing, enter on and sell or lease the Mortgaged Property or any part thereof. Such notice shall be given to such persons and in such manner and form and within such time as provided in the *Mortgages Act* (Ontario). In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, it is agreed that notice may be effectually given by leaving it with a grown-up person on the Mortgaged Property, if occupied, or by placing it on the Mortgaged Property if unoccupied, or at our option, by mailing it in a registered letter addressed to you at your last known address, or by publishing it once in a newspaper published in the county or district in which the Mortgaged Property is situate; and such notice shall be sufficient although not addressed to any person or persons by name or designation; and notwithstanding that any person to be affected thereby may be unknown, unascertained or under disability. Provided further, that in case default be made in the payment of the principal amount or interest or any other Secured Obligation or any part thereof and such default continues for two months after any payment falls due then we may exercise the foregoing powers of entering, leasing or selling of any of them without any notice, it being understood and agreed, however, that if the giving of notice by us shall be required by law then notice shall be given to such persons and in such manner and form and within such time as so required by law. It is

hereby further agreed that the whole or any part or parts of the Mortgaged Property may be sold by public auction or private contract, or partly one or partly the other, and that the proceeds of any sale hereunder may be applied first in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the Mortgaged Property or by reason of non-payment or procuring payment of monies, secured by the Mortgage or otherwise, and secondly in payment of all amounts of principal and interest and other Secured Obligations owing under the Mortgage; and if any surplus shall remain after fully satisfying our claims as aforesaid same shall be paid as required by law. We may sell any of the Mortgaged Property on such terms as to credit and otherwise as shall appear to us most advantageous and for such prices as can reasonably be obtained therefor and may make any stipulations as to title or evidence or commencement of title or otherwise which we shall deem proper, and may buy in or rescind or vary any contract for the sale of the whole or any part of the Mortgaged Property and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit, we shall be bound to pay you only such monies as have been actually received from purchasers after the satisfaction of our claims and for any of said purposes may make and execute all agreements and assurances as we shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder.

- (g) exercise any or all of your rights and remedies in respect of Your Interest;
- (h) as your agent, appoint by Instrument a Receiver of the Mortgaged Property and of all your properties, assets, effects and undertakings (collectively called the "Undertakings") related to or arising out of Your Interest (all of which are hereby charged and form part of the Mortgaged Property) with or without bond as we may determine, and in our absolute discretion and from time to time, remove any Receiver so appointed and appoint another in its stead, but we shall be under no liability for the remuneration, acts or omissions of the Receiver, its employees and agents;
- (i) commence proceedings in a court of competent jurisdiction for the appointment of a Receiver with such powers and duties (including the powers set out in paragraph 11.2) as the Court may see fit to confer by Order;
- (j) exercise any other rights and remedies under this Mortgage; or
- (k) exercise any other right and power a Receiver could exercise.

We shall not be liable for any debts we contract during enforcement of this Mortgage, for damages to persons or property, salaries or non-fulfillment of contracts during any period when we take any action referred to above, for any misconduct, negligence or misfeasance by us, or any employee or agent of ours, and neither the provisions of this Mortgage nor the exercise of any of the powers provided in this Mortgage shall render us a mortgagee in possession, and we shall not be accountable except for the monies we actually receive. You waive any provision of law which may be waived which imposes any greater obligations on us than described above.

All reasonable costs, charges and expenses, including allowance for the time and services of any officer of the Mortgagee or other person appointed by it for the purposes of protecting, preserving, remediating, taking care of, leasing, collecting the rents of, or managing generally the Mortgaged Property, including any fine or penalty the Mortgagee is obliged to incur by reason of any statute, order or direction of competent authority, shall be forthwith payable to the Mortgagee, and shall be a charge upon the Mortgaged Property and shall bear interest at the Interest Rate set out in the Mortgage Form.

11.2 **Receiver.** A Receiver appointed pursuant to this Mortgage shall be your agent and not ours, and, to the extent permitted by law or its appointment, shall, in our discretion, have all of our rights and powers (including those under this Mortgage), including the power to:

- (a) take possession of and enter upon the Mortgaged Property which constitutes part of Your Interest and the Undertakings or any part thereof;
- (b) sell or lease or concur in selling or leasing the Mortgaged Property and the Undertakings or any part thereof;
- (c) make any arrangement or compromise which it shall think expedient;
- (d) carry on, or concur in the carrying on of, any development then in progress or otherwise contemplated by you with respect to the Mortgaged Property or your business relating to the Mortgaged Property and for such purposes from time to

time to borrow money either secured or unsecured, and if secured by security on the whole or any part of the Mortgaged Property and the Undertakings, such security may rank before or pari passu with or behind this Mortgage; and

- (e) commence, continue or defend proceedings in the name of the Receiver or in your name, which the Receiver considers necessary or advisable for the proper protection of the whole or any portion of Your Interest or the enforcement of this Mortgage.

We may from time to time fix the remuneration of every such Receiver and direct the payment thereof out of the proceeds of the receivership. The rights and powers conferred by this paragraph are in addition to and not in substitution for any right we may from time to time possess.

- 11.3 **Application of Proceeds.** Any money from time to time received by the Receiver shall, subject to the claims of creditors, if any, which are secured by any Charges ranking in priority to this Mortgage, be paid, subject to our direction otherwise, by it **Firstly**, in payment of all costs, charges, expenses of and incidental to the appointment of the Receiver and the exercise by it of all of any of the powers aforesaid including the reasonable remuneration of the Receiver and all amounts properly payable by it, **Secondly**, in or towards payment to us of the amounts comprised in the Secured Obligation in such manner and order as we shall, in our absolute discretion, deem advisable, and **Thirdly**, any surplus shall be paid to you provided that in the event any party claims a charge against all or a portion of the surplus, the Receiver shall make such disposition of all or any portion of the surplus as the Receiver deems appropriate in the circumstances.
- 11.4 **Appointment of Attorney.** You irrevocably appoint us or the Receiver, as the case may be, with full power of substitution, as your attorney for and in your name to do everything necessary or incidental to the exercise of any or all of the powers conferred on us or the Receiver, as the case may be, pursuant to this Mortgage.

## 12. OTHER RIGHTS

- 12.1 **No Liability to Advance.** None of the preparation, execution or registration of this Mortgage, nor any advance or re-advance of money under it, nor any course of conduct by us, obligates us to advance or re-advance any money, or extend time for payment of a Secured Obligation, all of which remain in our absolute discretion.
- 12.2 **Continuing Security.** This Mortgage shall be general and continuing security for the Secured Obligations and any ultimate unpaid balance thereof, including a current or running account. The Secured Obligations may be reduced to zero from time to time without affecting the continuing nature of this Mortgage as security for any Secured Obligations thereafter incurred. Without limiting the foregoing, no payment, observance, performance or satisfaction of the Secured Obligations, nor any ceasing by you to be indebted or liable to us, will be deemed a redemption or discharge of this Mortgage.
- 12.3 **Security in Addition.** The provisions of this Mortgage and the security of this Mortgage are in addition to, but not in substitution for, any other security now or hereafter held by us for the Secured Obligations or any part thereof. This Mortgage shall not in any way affect or prejudice any security now or hereafter held by us for the whole or any part of the Secured Obligations. Any act done or omitted to be done by us:
  - (a) regarding any other securities held by us for the Secured Obligations or any part thereof shall not in any way affect or prejudice this Mortgage; or
  - (b) regarding this Mortgage shall not in any way affect or prejudice any other securities held by us for the Secured Obligations or any part thereof.
- 12.4 **Multiple Securities.** The occurrence of an Event of Default under this Mortgage constitutes default under all other agreements and security held by us in relation to the Secured Obligations and default under such other agreements or security constitutes an Event of Default hereunder.
- 12.5 **Performance of Obligations.** If you fail to perform any of your obligations hereunder or fail, upon request, to give us proof of performance thereof, we may (but will not be obligated to) perform any or all of such obligations or cause them to be performed, without prejudice to our other rights and remedies.
- 12.6 **Indulgences.** We may grant extensions of time and other indulgences, take and give up security, accept compositions, compromise, make settlements, grant releases and discharges, refrain from registering or maintaining registration of Charges, and otherwise deal with you, other obligants to us, your other creditors, sureties and other persons and

with Your Interest and other security, all as we see fit in our absolute discretion and without prejudice to your liability or our rights or remedies. You agree that you will not be released nor your liability in any way reduced because we have done, not done, or concurred in doing or not doing, anything whereby a surety would or might be released in whole or in part.

- 12.7 **Waiver.** We may waive any default hereunder provided that no such waiver, nor any failure to enforce at any time or from time to time any of our rights hereunder, shall be effective unless in writing or prejudice our rights in the event of any future default or breach.
- 12.8 **Remedies Cumulative.** We may in our sole discretion realize on various securities (including this Mortgage) and any parts thereof in any order that we consider advisable and no realization or exercise by us of any power or right under this Mortgage or other security shall in any way prejudice any further realization or exercise until all Secured Obligations are satisfied. All rights and remedies available to us are cumulative and not restrictive of remedies at law and in equity and by statute.
- 12.9 **Application of Payments.** We may, both before and after default, apply all payments made in respect of the Secured Obligations from time to time, and any monies realized from any security held therefor, to such parts of the Secured Obligations (whether or not then due) as we see fit.

### 13. PRESERVATION OF MORTGAGE AND OTHER SECURITY

- 13.1 **No Dealing With Equity of Redemption.** No extension of time given by us to you, or anyone claiming under you, or any other dealing by us with the owner(s) of the equity of redemption of Your Interest, shall in any way affect or prejudice our rights or remedies against you or any other person liable either in whole or in part for the payment of or performance of the Secured Obligations.
- 13.2 **No Merger.** Neither this Mortgage nor anything contained herein shall operate so as to create any merger, rebate or discharge of any of your representations, obligations (including debts owing to us) or covenants to us under any Agreement, any amendment to it, or other document or security now or hereafter held by us from you or any other person, all of which survive the execution and delivery of this Mortgage and our advance of money. The taking of a judgement on any covenant herein shall not operate as a merger of this said covenant, or affect our right to receive any interest when due.

### 14. MISCELLANEOUS

- 14.1 **Payment.** We may require payment of the Secured Obligations at any place in Canada as we may direct.
- 14.2 **Strict Observance.** You will strictly observe and perform each your agreements set out herein.
- 14.3 **Further Assurances.** You will execute such documents and further assurances of Your Interest and take such action as we may require.
- 14.4 **No Representations.** We have not made and you do not rely on any representations, warranties, covenants, agreements, conditions or provisos, oral or otherwise, whether made by us or any person acting actually or ostensibly on our behalf, other than those contained in this Mortgage unless those representations, warranties, covenants, agreements, conditions and provisos are contained in a supplementary contact in writing duly executed by both you and us and expressed to be collateral to this Mortgage.
- 14.5 **Assignment.** You will not assign any of your rights or obligations under this Mortgage, and no such purported assignment shall be effective, without our prior written consent, which may be arbitrarily withheld.
- 14.6 **Notice.** Notice may be given to either party by prepaid mail or delivered to the party for whom it is intended, at the address of such party provided on the Mortgage Form or at such other address as may be given in writing by one party to the others, and any notice if posted shall be deemed to have been given at the expiration of three business days after posting and if delivered, on delivery. Delivery by fax transmission is deemed to be received on the day of transmission.
- 14.7 **Modification.** No amendment of this Mortgage will be effective unless signed by all parties to this Mortgage.

14.8 **Exclusion of Statutory Covenants.** The implied covenants deemed to be included in a charge under subsection 7(1) of the *Land Registration Reform Act* (Ontario) as amended or re-enacted are excluded from this Mortgage.

END OF DOCUMENT

# EXHIBIT D



## PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND

REGISTRY

OFFICE #20

07082-0016 (LT)

PAGE 1 OF 3

PREPARED FOR Rebecca01

ON 2025/04/30 AT 11:32:57

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: PT LTS 14, 15 & 16 , PL 90 , AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292 ; BURLINGTON

PROPERTY REMARKS:ESTATE/QUALIFIER:FEE SIMPLE  
LT CONVERSION QUALIFIEDRECENTLY:

FIRST CONVERSION FROM BOOK

PIN CREATION DATE:

1996/12/16

OWNERS' NAMES

1391 ONTARIO ST. INC.

CAPACITY

ROWN

SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
**EFFECTIVE	2000/07/29	THE NOTATION OF THE	"BLOCK IMPLEMENTATION DATE" OF 1996/12/16 ON THIS PIN**			
**WAS REPLACED WITH THE		"PIN CREATION DATE"	OF 1996/12/16**			
** PRINTOUT	INCLUDES ALL	DOCUMENT TYPES AND	DELETED INSTRUMENTS SINCE 1996/12/13 **			
**SUBJECT,	ON FIRST REGISTRATION UNDER THE	LAND TITLES ACT, TO:				
**	SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO	LAND TITLES:	1996/12/16 **				
119980	1961/01/25	BYLAW				C
214355	1966/11/25	AGREEMENT				C
534022	1981/01/07	AGREEMENT			THE CORPORATION OF THE CITY OF BURLINGTON	C
534023	1981/01/07	AGREEMENT			THE CORPORATION OF THE CITY OF BURLINGTON	C
748726	1990/07/31	CHARGE	*** COMPLETELY DELETED ***		CIBC MORTGAGE CORPORATION	
748727	1990/07/31	ASSIGNMENT GENERAL	*** COMPLETELY DELETED ***			
854221	1996/07/31	TRANSFER	*** COMPLETELY DELETED ***		CRUICKSHANKS, WAYNE	
854222	1996/07/31	CHARGE	*** COMPLETELY DELETED ***			

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



## PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND

REGISTRY

OFFICE #20

07082-0016 (LT)

PAGE 2 OF 3

PREPARED FOR Rebecca01

ON 2025/04/30 AT 11:32:57

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
854223	1996/07/31	ASSIGNMENT GENERAL		*** COMPLETELY DELETED ***	BUSINESS DEVELOPMENT BANK OF CANADA	
	REMARKS: RENTS,	854222				
H665068	1997/02/21	DISCH OF CHARGE		*** COMPLETELY DELETED *** CIBC MORTGAGE CORPORATION		
	REMARKS: RE: 748726					
H768835	1998/12/11	CHARGE		*** COMPLETELY DELETED *** CRUICKSHANKS, WAYNE	CANADA TRUSTCO MORTGAGE COMPANY	
H768836	1998/12/11	NOTICE		*** COMPLETELY DELETED *** CRUICKSHANKS, WAYNE	CANADA TRUSTCO MORTGAGE COMPANY	
	REMARKS: H768835 - RENTS					
H771873	1999/01/08	DISCH OF CHARGE		*** COMPLETELY DELETED *** BUSINESS DEVELOPMENT BANK OF CANADA		
	REMARKS: RE: 854222					
HR261773	2004/02/05	DISCH OF CHARGE		*** COMPLETELY DELETED *** CANADA TRUSTCO MORTGAGE COMPANY		
	REMARKS: RE: H768835					
HR377135	2005/05/17	CHARGE		*** COMPLETELY DELETED *** CRUICKSHANKS, WAYNE	ROYAL BANK OF CANADA	
HR672797	2008/06/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
	REMARKS: RE: HR377135					
HR1220453	2014/10/15	TRANSFER		*** COMPLETELY DELETED *** CRUICKSHANKS, WAYNE	LISA PHILP & ASSOCIATES LTD.	
	REMARKS: PLANNING ACT STATEMENTS.					
HR1220454	2014/10/15	CHARGE		*** COMPLETELY DELETED *** LISA PHILP & ASSOCIATES LTD.	ROYAL BANK OF CANADA	
HR1409772	2016/11/15	CHARGE		*** COMPLETELY DELETED *** LISA PHILP & ASSOCIATES LTD.	BARRIS, SHELDON	
HR1409773	2016/11/15	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** LISA PHILP & ASSOCIATES LTD.	BARRIS, SHELDON	
	REMARKS: TO BE DELETED UPON THE DELETION OF HR1409772					

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



## PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND

REGISTRY

OFFICE #20

  
07082-0016 (LT)

PAGE 3 OF 3

PREPARED FOR Rebecca01

ON 2025/04/30 AT 11:32:57

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
HR1497860	2017/10/18	CHARGE		*** COMPLETELY DELETED *** LISA PHILP & ASSOCIATES LTD.	ROYAL BANK OF CANADA	
HR1497879	2017/10/18	NO ASSGN RENT GEN		LISA PHILP & ASSOCIATES LTD.	ROYAL BANK OF CANADA	C
HR1498139	2017/10/19	DISCH OF CHARGE		*** COMPLETELY DELETED *** BARRIS, SHELDON		
		REMARKS: HR1409772.				
HR1499861	2017/10/26	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
		REMARKS: HR1220454.				
HR1943676	2023/01/13	TRANSFER	\$2,203,000	LISA PHILP & ASSOCIATES LTD.	1391 ONTARIO ST. INC.	C
		REMARKS: PLANNING ACT STATEMENTS.				
HR1943677	2023/01/13	CHARGE	\$2,446,000	1391 ONTARIO ST. INC.	BUSINESS DEVELOPMENT BANK OF CANADA	C
HR2003441	2023/11/30	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
		REMARKS: HR1497860.				
HR2058879	2024/09/24	CONSTRUCTION LIEN	\$77,574	1000660443 ONTARIO INC.		C
HR2068548	2024/11/15	APL COURT ORDER		SUPERIOR COURT OF JUSTICE	TDB RESTRUCTURING LIMITED	C
		REMARKS: APPOINTING RECEIVER				
HR2084512	2025/02/07	CERTIFICATE		1000660443 ONTARIO INC.		C
		REMARKS: HR2058879				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
 NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

# EXHIBIT E

### Properties

PIN 07082 - 0016 LT

Description PT LTS 14, 15 & 16 , PL 90 , AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292 ;  
BURLINGTON

Address 1391 ONTARIO ST  
BURLINGTON

### Consideration

Consideration \$77,574.50

### Claimant(s)

Name 1000660443 ONTARIO INC.

Address for Service 332 Guelph Street Unit 7 & 8  
Georgetown, On L7G 4B5

I am the lien claimant and the facts stated in the claim for lien are true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

### Statements

Name and Address of Owner 1391 Ontario St. Inc.-1391 Ontario St., Brulington ON Name and address of person to whom lien claimant supplied services or materials 1391 Ontario St. Inc.-1391 Ontario St., Brulington ON Time within which services or materials were supplied from 2024/05/24 to 2024/07/22 Short description of services or materials that have been supplied Renovations, including labour and materail Contract price or subcontract price \$52,940.50 Amount claimed as owing in respect of services or materials that have been supplied \$52,940.50

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

### Signed By

Ravinder Pal Singh Dhaliwal 30 Eglinton Ave West, Suite # 410 acting for Signed 2024 09 24  
Mississauga  
L5R 3E7  
Applicant(s)

Tel 905-795-1117

Fax 905-795-0049

I have the authority to sign and register the document on behalf of the Applicant(s).

### Submitted By

RAVINDER DHALIWAL BARRISTER, SOLICITOR 30 Eglinton Ave West, Suite # 410 2024 09 24  
Mississauga  
L5R 3E7

Tel 905-795-1117

Fax 905-795-0049

### Fees/Taxes/Payment

Statutory Registration Fee \$69.95

Total Paid \$69.95

# EXHIBIT F



Court File No. BK-24-00208718-OT31

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario

**APPLICATION FOR BANKRUPTCY ORDER**

The applicant (the “**Applicant**”), The Fuller Landau Group Inc., in its capacity as receiver (the “**Receiver**”) of the property, assets and undertaking of The Lion’s Share Group Inc. (“**Lion’s Share**”), hereby makes an application to the Court that Thomas Dylan Suitor (the “**Debtor**”) be adjudged Bankrupt and that a Bankruptcy Order be made in respect of the property of the Debtor, of the City of Burlington, in the Province of Ontario, lately carrying on business in the Province of Ontario, and say:

1. THAT the said Debtor has at some time during the six months next preceding the filing of this Application resided and/or conducted business in the City of Burlington, Province of Ontario.
2. THAT the said Debtor is justly and truly indebted to Lion’s Share for, among other things, the following amounts:
  - (a) \$1,267,948.83; and
  - (b) \$1,403,393.17.
3. THAT interest and costs continue to accrue on the above amounts.

4. THAT pursuant to an Order of the Court made on April 3, 2024 in Court File No. CV-24-00717669-00CL (the “**Receivership Order**”), Fuller was appointed as Receiver over all of the property, assets and undertaking of Lion’s Share;
5. THAT the Receiver has the power and authority to bring this application pursuant to, among other things, paragraph 3(e) and (i) of the Receivership Order;
6. THAT Lion’s Share does not, nor does any person on its behalf, hold any security on the said Debtor’s property, or on any part thereof, for the payment of the said sum;
7. THAT the Debtor has, within the six months next preceding the date of the filing of this Application, committed the following acts of bankruptcy, namely:
  - (a) he has ceased to meet his liabilities generally as they become due, including without limitation, the indebtedness owing by the Debtor to Lion’s Share and to other creditors;
  - (b) he has made a fraudulent gift, delivery or transfer of the Debtor’s property to related parties, including by granting mortgages to National Bank of Canada over two residential properties owned by him and dissipating the proceeds of such mortgages; and
  - (c) he, through holding companies, has purported to create a charge on certain properties indirectly held by him, including by registering mortgages on such properties by other holding companies, which charges would, under the *Bankruptcy and Insolvency Act* (Canada) be void as a fraudulent preference or would be further fraudulent transfers, gifts or deliveries of the Debtor’s property.

8. THAT TDB Restructuring Limited of the City of Toronto in the Province of Ontario, is a person qualified to act as trustee of the property of the Debtor (the “**Trustee**”), has agreed to act as such and is acceptable to the undermentioned creditors:

<u>CREDITOR</u>	<u>ADDRESS</u>	<u>AMOUNT</u>
Lion's Share	c/o Fuller Landau 151 Bloor Street West 12 <sup>th</sup> Floor Toronto, Ontario M5S1S4	(a) \$1,267,948.83; and (b) \$1,403,393.17 Plus interest and expenses
Nicole Kelly	c/o Aird & Berlis LLP 181 Bay Street, Suite 1800 Toronto, Ontario M5J2T9	\$75,000.00, plus interest and expenses

**DATED** at Toronto, Ontario this 30<sup>th</sup> day of August, 2024

SIGNED by the Applicant

In the presence of:

*Lauren Archibald*

(Signature of Witness)

Lauren Archibald  
87151U

*Gary Abrahamson*

THE FULLER LANDAU GROUP INC.  
solely in its capacity as receiver of the  
property, assets and undertaking of THE  
LION'S SHARE GROUP INC. and not  
in its personal capacity

**ISSUED** at Toronto, in the Province of Ontario this 30th., day of August, 2024

*Debbie L Stubbs*

Digitally signed by Debbie L Stubbs  
Date: 2024.08.30 16:15:13 -04'00'

REGISTRAR IN BANKRUPTCY

PER Jove Ponniah, Registrar in Bankruptcy  
OFFICER OF THE BANKRUPTCY COURT IN ONTARIO

Court File No. BK-24-00208718-OT31

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario

**AFFIDAVIT OF VERIFICATION OF STATEMENTS IN APPLICATION**

I, Gary Abrahamson, of the City of Toronto, in the Province of Ontario, applicant named in the application hereunto annexed, **MAKE OATH AND SAY:**

1. That I am the president of The Fuller Landau Group Inc. (“**Fuller**”), the court appointed receiver (the “**Receiver**”) of the property, assets and undertakings of The Lion’s Share Group Inc. (“**Lion’s Share**”). As such, I have knowledge of the facts hereinafter deposed to.
2. Fuller was appointed Receiver pursuant to an Order of the Court made on April 3, 2024 in Court File No. CV-24-00717669-00CL.
3. Pursuant to, among other things, paragraphs 3(e) and (i) of the Receivership Order, the Receiver has the power and authority to bring this application.
4. That Thomas Dylan Suitor is justly and truly indebted to Lion’s Share for, among other things, the following amounts:
  - (a) \$1,267,948.83; and
  - (b) \$1,403,393.17.

5. THAT interest and costs continue to accrue on the above amounts.
6. This debt arises from promissory notes signed and guaranteed by Thomas Dylan Sutor in favor of Lion's Share on behalf of a number of companies indebted to Lion's Share, including: 10 Norfolk St. Inc., 388 Downie St. Inc., Commercial Urkel Inc., Happy Town Housing Inc., and Up-town Funk Inc.
7. That the facts all alleged in the said Application are, within my own knowledge, true.

**SWORN** before me at the City of  
Toronto, in the Province of Ontario,  
this 30<sup>th</sup> day of August, 2024

Lauren Archibald

A Commissioner of Oaths

Lauren Archibald  
87151U

Gary Abrahamson

GARY ABRAHAMSON

**TO: Thomas Dylan Sutor**  
775 King Road, Burlington, ON, L7T3K7

TAKE NOTICE that an Application for a Bankruptcy Order has been made in respect of your property and will be heard before the presiding Judge, at 330 University Avenue, in the City of Toronto, Ontario on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 2024 at the hour of \_\_\_\_\_ o'clock a.m., or so soon thereafter as the Application can be heard.

AND FURTHER TAKE NOTICE that if notice of cause against the Application is not filed in Court and a copy thereof served on the solicitor for the Applicant creditor at least two (2) days before the hearing and if you do not appear at the hearing, the Court may make a Bankruptcy Order on such proof of the statements in the application as the Court shall think sufficient.

DATED at Toronto, in the Province of Ontario this 30th. day of August, 2024.

Court No. BK-24-00208718-OT31

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)**

**IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual with  
the locality of Burlington, Ontario**

**APPLICATION FOR  
BANKRUPTCY ORDER**

**Norton Rose Fulbright Canada LLP**  
222 Bay Street, Suite 3000, P.O. Box 53  
Toronto, Ontario  
M5K 1E7 CANADA

**Jennifer Stam LSO#:46735J**

Tel: 416.202.6707

[Jennifer.stam@nortonrosefulbright.com](mailto:Jennifer.stam@nortonrosefulbright.com)

**James Renihan LSO#: 57553U**

Tel: 416.216.1944

[james.renihan@nortonrosefulbright.com](mailto:james.renihan@nortonrosefulbright.com)

Lawyers for The Fuller Landau Group Inc., receiver  
the property, assets and undertaking of The Lion's  
Share Group Inc.



# EXHIBIT G

THE HONOURABLE JUSTICE OSBORNE

OCTOBER 7, 2024



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario

**ORDER**

**(Appointing Interim Receiver)**

**THIS MOTION** made by the applicant, The Fuller Landau Group Inc., in its capacity as receiver of the property, assets and undertaking of The Lion's Share Group Inc., (the "**Applicant**") for an Order pursuant to section 46 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") appointing TDB Restructuring Limited ("**TDB**") as interim receiver (in such capacity, the "**Interim Receiver**") without security, of all of the property, assets and undertaking of Thomas Dylan Sutor (the "**Debtor**"), was heard orally on October 3, 2024, in Toronto, Ontario.

**ON READING** the Notice of Motion of the Applicant dated August 31, 2024; the Fourth Report of the Applicant dated August 31, 2024; the Supplement to the Fourth Report of the Applicant dated September 30, 2024; the consent of TDB to act as Interim Receiver dated August 30, 2024; and the affidavit of verification of Gary Abrahamson sworn August 30, 2024;

**AND UPON** hearing the submissions of counsel for the Interim Receiver, counsel for the Applicant, counsel for the Debtor, and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of Evan Cobb sworn September 19, 2024 and the affidavits of service of Lauren Archibald sworn September 19, 2024 and October 1, 2024.

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this matter is properly heard today and hereby dispenses with further service thereof.

## APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 46 of the BIA, TDB is hereby appointed Interim Receiver, without security, of all of the property, assets and undertaking of the Debtor, including, without limitation, the real property described in Schedule “A” hereto (the “**Property**”).

## INTERIM RECEIVER’S POWERS

3. **THIS COURT ORDERS** that the Interim Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Interim Receiver is hereby expressly empowered and authorized to do any of the following where the Interim Receiver considers it necessary or desirable:

- (a) to monitor the Debtor’s bank accounts and the accounts of Related Entities (as defined below) and approve all disbursements from the Debtor’s bank accounts and the accounts of Related Entities;
- (b) to take any steps that the Interim Receiver may deem necessary or desirable to prevent any disbursement, withdrawal, transfer, sale, encumbrance of personal or real property of the Debtor or corporations or other entities associated with, related to or controlled by the Debtor (the “**Related Entities**”), including the Related Entities listed on Schedule “C” hereto;
- (c) to engage independent security personnel to preserve and protect the Property;
- (d) to take any steps the Interim Receiver may deem necessary or desirable to preserve and protect the personal property and real property legally or beneficially owned by the Debtor or the Related Entities pending further order of the Court including, but not limited to, changing locks, security codes and passwords and the taking of physical inventories, and the control of access to the Debtor’s or the Related Entities’ Records (as defined below) and premises;

- (e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Interim Receiver's powers and duties, including without limitation those conferred by this Order;
- (f) to report to, meet with and discuss with such affected Persons (as defined below) as the Interim Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Interim Receiver deems advisable;
- (g) to undertake any investigations deemed appropriate by the Interim Receiver with respect to the business and affairs of the Debtor;
- (h) to apply to this Court for such further relief, advice and directions as the Interim Receiver may determine as necessary or desirable;
- (i) to register a copy of this Order and any other Orders in respect of the Property against title to the Property or against title to the assets of the Related Entities;
- (j) to conduct examinations of any person, if deemed necessary in the Interim Receiver's discretion; and
- (k) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtor or the Related Entities,

and in each case the Interim Receiver shall be exclusively authorized and empowered to do so, to the exclusion of the Debtor, and without interference from any other person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE INTERIM RECEIVER**

4. **THIS COURT ORDERS** that: (i) the Debtor; (ii) all of his current and former employees, agents, accountants, legal counsel and all other persons acting on his instructions or behalf; (iii) all service providers, and all other persons acting on his instructions or behalf; (iv) all Related Entities and their respective current and former directors, officers, employees, agents, accountants, legal counsel, and equity holders; and (v) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being

“**Persons**” and each being a “**Person**”) shall forthwith advise the Interim Receiver of the existence of any Property in such Person’s possession or control, and shall grant immediate and continued access to the Property to the Interim Receiver.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Interim Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of the Debtor or the Related Entities, and any computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Interim Receiver or permit the Interim Receiver to make, retain and take away copies thereof and grant to the Interim Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Interim Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer, in the cloud or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Interim Receiver for the purpose of allowing the Interim Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Interim Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Interim Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Interim Receiver with all such assistance in gaining immediate access to the information in the Records as the Interim Receiver may in its discretion require including providing the Interim Receiver with instructions on the use of any computer, cloud or other system and providing the Interim Receiver with any and all access codes, account names, account numbers, account creating credentials that may be required to gain access to the information.

## **NO PROCEEDINGS AGAINST THE INTERIM RECEIVER**

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Interim Receiver except with the written consent of the Interim Receiver or with leave of this Court.

## **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or any Related Entities or the Property shall be commenced or continued except with the written consent of the Interim Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor, the Related Entities or the Property are hereby stayed and suspended pending further Order of this Court.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Related Entities, the Interim Receiver, or affecting the Property, including, without limitation, licences and permits, are hereby stayed and suspended except with the written consent of the Interim Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Interim Receiver or the Debtor, to carry on any business which the Debtor, is not lawfully entitled to carry on; (ii) exempt the Interim Receiver or the Debtor, from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH THE INTERIM RECEIVER**

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor or a Related Entity, without written consent of the Interim Receiver or leave of this Court.

## CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or any of the Related Entities, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll services, insurance, employee benefits, transportation services, utility or other services to the Debtor or the Related Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Interim Receiver (including, where a notice of termination may have been given with an effective date after the date of this Order), and that the Interim Receiver shall be entitled to the continued use of the Debtor's or the Related Entities' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Interim Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Interim Receiver, or as may be ordered by this Court.

## EMPLOYEES

12. **THIS COURT ORDERS** that all employees of the Debtor or the Related Entities shall remain the employees of the Debtor or the Related Entities. The Interim Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Interim Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA, or under the *Wage Earner Protection Program Act* (the “**WEPPA**”).

## LIMITATION ON ENVIRONMENTAL LIABILITIES

13. **THIS COURT ORDERS** that nothing herein contained shall require the Interim Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property or the Related Entities that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating

to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Interim Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Interim Receiver shall not, as a result of this Order or anything done in pursuance of the Interim Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property or any property of the Related Entities within the meaning of any Environmental Legislation, unless it is actually in Possession.

#### **LIMITATION ON THE INTERIM RECEIVER’S LIABILITY**

14. **THIS COURT ORDERS** that the Interim Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the WEPPA. Nothing in this Order shall derogate from the protections afforded the Interim Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **INTERIM RECEIVER’S ACCOUNTS**

15. **THIS COURT ORDERS** that the Interim Receiver and counsel to the Interim Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Interim Receiver and counsel to the Interim Receiver shall be entitled to and are hereby granted a charge (the “**Interim Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Interim Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

16. **THIS COURT ORDERS** that the Interim Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Interim Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

17. **THIS COURT ORDERS** that prior to the passing of its accounts, the Interim Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Interim Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## **FUNDING OF THE INTERIM RECEIVERSHIP**

18. **THIS COURT ORDERS** that the Interim Receiver be at liberty and it is hereby empowered to borrow by way of a credit facility, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount that is acceptable to the Applicant and as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Interim Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Interim Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest, fees and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Interim Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that neither the Interim Receiver’s Borrowings Charge nor any other security granted by the Interim Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

20. **THIS COURT ORDERS** that the Interim Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Interim Receiver’s Certificate**”), as modified to reflect the terms of the credit facility between the Interim Receiver and the Applicant referred to in paragraph 18, for any amount borrowed by it pursuant to this Order.

21. **THIS COURT ORDERS** that the monies from time to time borrowed by the Interim Receiver pursuant to this Order or any further order of this Court and any and all Interim Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Interim Receiver’s Certificates.

## SERVICE AND NOTICE

22. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://tdbadvisory.ca/insolvency-case/d-suitor>.

23. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Interim Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to any creditors of the Debtor or other interested parties at their respective addresses as last shown on the records of the Debtor, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

24. **THIS COURT ORDERS** that the Applicant, the Interim Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

## GENERAL

25. **THIS COURT ORDERS** that the Interim Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. **THIS COURT ORDERS** that nothing in this Order shall prevent the Interim Receiver from acting as a receiver, trustee in bankruptcy or monitor of the Debtor.

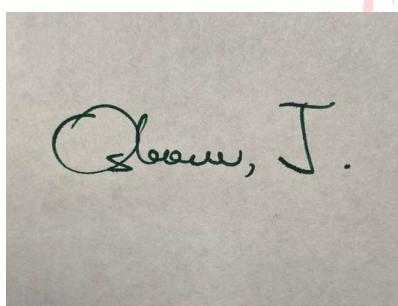
27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Interim Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

28. **THIS COURT ORDERS** that the Interim Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Interim Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

29. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Interim Receiver from the estates of the Debtor, with such priority and at such time as this Court may determine.

30. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Interim Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

31. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Prevailing Eastern Time on the date hereof without any need for entry and/or filing.

A rectangular image containing a handwritten signature in black ink. The signature appears to read "Osborne, J." The signature is somewhat stylized and cursive.

Digitally signed  
by Osborne J.  
Date:  
2024.10.07  
14:11:30 -04'00'

**SCHEDULE "A"**  
**DESCRIPTION OF REAL PROPERTY**

<b>No.</b>	<b>Municipal Address</b>	<b>PIN</b>	<b>Registered Owner</b>
1.	775 King Road, Burlington, Ontario, L7T 3K6	PIN 07096-0052 (LT)	Thomas Dylan Suitor
2.	2298 Fassel Avenue, Burlington, Ontario, L7R 3P3	PIN 07077-0108 (LT)	Thomas Dylan Suitor

**SCHEDULE “B”**  
**INTERIM RECEIVER CERTIFICATE**

CERTIFICATE NO.\_\_\_\_\_

AMOUNT \$\_\_\_\_\_

1. THIS IS TO CERTIFY that TDB Restructuring Limited, the interim receiver (the “**Interim Receiver**”) of the property, assets and undertaking of Thomas Dylan Sujor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the “**Property**”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the \_\_\_\_ day of August, 2024 (the “**Order**”) made in an action having Court file number BK-24-00208718-OT31, has received as such Interim Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_, which the Interim Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded **[daily][monthly not in advance on the \_\_\_\_ day of each month]** after the date hereof at a notional rate per annum equal to the rate of percent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**TDB RESTRUCTURING LIMITED**, solely in its capacity as Interim Receiver of the Property, and not in its personal capacity

Per: \_\_\_\_\_

Name:

Title:

**SCHEDULE "C"**  
**RELATED ENTITIES**

No.	Entity Name
1.	10 Norfolk St. Inc.
2.	1083 Main Street Inc.
3.	2657677 Ontario Inc.
4.	2710654 Ontario Inc.
5.	388 Downie St. Inc.
6.	642 Hamilton Road Inc.
7.	Commercial Urkel Inc.
8.	Conduit Asset Management Inc.
9.	Dylan Sutor Professional Real Estate Holding Corporation
10.	Elev8 Inc.
11.	Elevation Reality Network Inc.
12.	Happy Town Housing Inc.
13.	Old Thing Back Inc.
14.	Prospect Real Estate Inc.
15.	Upgrade Housing Inc.
16.	Up-town Funk Inc.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**

PROCEEDING COMMENCED AT  
TORONTO

**INTERIM RECEIVER ORDER**

**NORTON ROSE FULBRIGHT CANADA LLP**  
222 Bay Street, Suite 3000  
Toronto ON M5K 1E7

**Jennifer Stam LSO#: 46735J**  
Tel: 416.202.6707  
[jennifer.stam@nortonrosefulbright.com](mailto:jennifer.stam@nortonrosefulbright.com)

**Evan Cobb LSO#: 55787N**  
Tel: 416.216.1929  
[evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com)

Lawyers for the Receiver

# EXHIBIT H

**From:** Jeffrey Berger <jberger@tdbadvisory.ca>  
**Sent:** Monday, April 14, 2025 11:26 AM  
**To:** Van Klink, Tony  
**Cc:** 'CHOW, EUGENE'; 'TORRELLI, Gianna (TORONTO)'; Bryan Tannenbaum; 'Fred Tayar'  
**Subject:** [\*\*EXT\*\*] RE: Happy Town Housing (BMO) and 1391 Ontario Street (BDC) [MTDMS-Legal.FID12658569]

Tony,

We are writing to confirm that the Interim Receiver consents to the lifting of the stay for the purpose of BMO and BDC proceeding with the enforcement of their security.

As discussed on our last call, and as our counsel has brought to your attention previously, Mr. Suitor has asked the Interim Receiver to convey that he intends to fully support the sale of these properties, and he is willing to co-operate in any way necessary in the hopes that enforcement costs can be minimized. **Incurring unnecessary enforcement costs will ultimately be to the detriment of the creditors (including your clients)**, given the anticipated realizations from these assets.

If Mr. Suitor is willing to comply and list the properties immediately, the Interim Receiver could oversee the sale process pursuant to the terms of the existing Order and work with the secured lenders throughout the process to ensure transparency. Alternatively, should the secured lenders wish to proceed with enforcement we believe that it would be most efficient and cost-effective for your clients to appoint the Interim Receiver as agent or receiver to sell the subject properties directly.

Mr. Suitor has advised that he is agreeable to having the properties listed for sale immediately upon receiving the consent of the secured lenders to proceed in this manner, should they be agreeable.

We would welcome an opportunity to discuss the foregoing options with you and your clients prior to any additional enforcement actions being taken.

Thank you,



**TDB Restructuring Limited**  
Licensed Insolvency Trustee

**Jeffrey Berger, CPA, CA, CIRP, LIT**  
Managing Director

[jberger@tdbadvisory.ca](mailto:jberger@tdbadvisory.ca)

647-726-0496

416-915-6228

11 King St. West, Suite 700  
Toronto, ON M5H 4C7

**[tdbadvisory.ca](http://tdbadvisory.ca)**

Integrity. Leadership. Excellence.

**From:** Van Klink, Tony <tvanklink@millerthomson.com>

**Sent:** April 11, 2025 4:32 PM

**To:** Jeffrey Berger <jberger@tdbadvisory.ca>; 'Fred Tayar' <fred@fredtayar.com>

**Cc:** 'CHOW, EUGENE' <EUGENE.CHOW@bmo.com>; 'TORRELLI, Gianna (TORONTO)' <gianna.torrelli@bdc.ca>

**Subject:** Happy Town Housing (BMO) and 1391 Ontario Street (BDC) [MTDMS-Legal.FID12658569]

External sender

Fred, Jeffrey,

I am following up on our Teams videocall on Tuesday afternoon during which we discussed the IR providing its consent to BMO and BDC proceeding with the enforcement of their security. I understood from the call that the IR did not take any issue with same and would be providing its consent. As of this afternoon the consent has not yet been received.

Please confirm by reply email that the IR consents.

If something has changed since our call that the IR is no longer prepared to consent, I trust that you will let me know.

If I do not receive a reply to this email by 12 noon on Monday, April 14, I will assume that the IR is no longer prepared to consent and both BMO and BDC will proceed with bringing a lift stay motion.

**TONY VAN KLINK**

**Partner**

**Miller Thomson LLP**

**One London Place**

255 Queens Avenue, Suite 2010

London, Ontario | N6A 5R8

**T +1 519.931.3509**

**C +1 519.636.7425**

[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)

[View my web page](#)



[Subscribe to our newsletters](#)

You can [subscribe](#) to Miller Thomson's free electronic communications, or [unsubscribe](#) at any time.

**CONFIDENTIALITY:** This e-mail message (including attachments, if any) is confidential and is intended only for the addressee. Any unauthorized use or disclosure is strictly prohibited. Disclosure of this e-mail to anyone other than the intended addressee does not constitute waiver of privilege. If you have received this communication in error, please notify us immediately and delete this. Thank you for your cooperation. This message has not been encrypted. Special

# EXHIBIT I

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUPTCY  
OF THOMAS DYLAN SUITOR, an individual  
with a locality of Burlington, Ontario

**BANKRUPTCY ORDER**

**UPON** the application of The Fuller Landau Group Inc. (the “**Applicant**”), in its capacity as receiver of the property, assets, and undertaking of The Lion’s Share Group Inc. (“**Lion’s Share**”), a creditor, issued on the 30<sup>th</sup> day of August, 2024;

**AND UPON** reading the Applicant’s Application Record dated November 22, 2024; the Applicant’s Supplementary Application Record dated February 14, 2025; Dylan Sutor’s (the “**Debtor**”) Responding Motion Record dated September 26, 2024; the Debtor’s Supplementary Responding Motion Record dated October 2, 2024; the Debtor’s Responding Application Record dated January 14, 2025; the Debtor’s Notice of Dispute dated February 3, 2025; the Supplementary Affidavit of Dylan Sutor affirmed February 3, 2025, the Transcript Brief dated February 14, 2025; the Debtor’s Supplementary Responding Application Record dated February 21, 2025; the Applicant’s Factum dated February 14, 2025; the Debtor’s Responding Factum dated February 19, 2024; the Applicant’s Compendium dated February 24, 2025; the Debtor’s Oral Hearing Compendium dated February 24, 2025; and hearing submissions of counsel for the Applicant, the Debtor, the Secured Lender Representative, the Unsecured Lender Representative, and the National Bank of Canada;

**AND** it appearing to the Court that the following acts of bankruptcy have been committed by the debtor (the “**Debtor**”), Thomas Dylan Sutor:

(a) has ceased meeting his liabilities generally as they become due, including,

without limitation, the indebtedness owing by the Debtor to Lion's Share;

1. **IT IS ORDERED** that the Debtor, of the City of Burlington, in the Province of Ontario, be and is hereby adjudged bankrupt and a Bankruptcy Order is hereby made against the Debtor on this date.
2. **IT IS FURTHER ORDERED** that TDB Restructuring Limited, of the City of Toronto, in the Province of Ontario, is hereby appointed as trustee of the estate of the bankrupt Debtor.
3. **IT IS FURTHER ORDERED** that the trustee give security in cash or by bond or suretyship without delay, in accordance with subsection 16(1) of the *Bankruptcy and Insolvency Act*.
4. **IT IS FURTHER ORDERED** that the costs of the Applicant be paid out of the estate of the bankrupt on taxation of the estate.

Jana  
Steele

---

Digitally signed  
by Jana Steele  
Date: 2025.03.26  
17:24:47 -04'00'

IN THE MATTER OF THE BANKRUPTCY OF THOMAS DYLAN SUITOR, AN INDIVIDUAL  
WITH A LOCALITY OF BURLINGTON, ONTARIO

Court File No. BK-24-00208718-OT31

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY**

**BANKRUPTCY ORDER**

**NORTON ROSE FULBRIGHT CANADA LLP**  
222 Bay Street, Suite 3000  
Toronto ON M5K 1E7

**Jennifer Stam LSO#: 46735J**

Tel: 416.202.6707  
[jennifer.stam@nortonrosefulbright.com](mailto:jennifer.stam@nortonrosefulbright.com)

**James Renihan LSO#: 57553U**

Tel: 416.216.1944  
[james.renihan@nortonrosefulbright.com](mailto:james.renihan@nortonrosefulbright.com)

Lawyers for the Receiver

**INTENTIONALLY LEFT BLANK**

**CITATION:** Suitor v. Fuller Landau Group, 2025 ONSC 1686  
**COURT FILE NO.:** BK-24-208718-000T  
**DATE:** 20250325

**ONTARIO**

**SUPERIOR COURT OF JUSTICE [Commercial List]**

**B E T W E E N:**

**IN THE MATTER OF THE BANKRUPTCY OF  
THOMAS DYLAN SUITOR  
AN INDIVIDUAL WITH A LOCALITY OF BURLINGTON, ONTARIO**

**BEFORE:** Justice Jana Steele

**HEARD:** February 25, 2025

**COUNSEL:** *James Renihan, Jennifer Stam & Lauren Archibald*, for The Fuller Landau Group Inc., in its capacity as Receiver of The Lion's Share Group Inc.

*Tanya Pagliaroli & Vinayak Mishra*, for Dylan Suitor

*George Benchetrit*, Secured Lender Representative Counsel

*Mario Forte*, Unsecured Lender Representative Counsel

*Patrick Corney*, for the National Bank of Canada

**JUSTICE JANA STEELE**

[1] The applicant, The Fuller Landau Group Inc. (the "LS Receiver"), in its capacity as receiver of the property of The Lion's Share Group Inc. ("Lion's Share"), asks the court to adjudge Thomas Dylan Suitor as Bankrupt and make a Bankruptcy Order in respect of Mr. Suitor's property pursuant to s. 43 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA").

[2] The application is opposed by the respondent debtor, Mr. Suitor. Mr. Suitor disputes that the applicant has satisfied the test for a bankruptcy order and asks that the application be dismissed.

[3] In the alternative, Mr. Suitor seeks a stay of the bankruptcy proceedings until his personal liability is determined in civil court.

[4] For the reasons set out below, the application is granted.

## Background

[5] On April 3, 2024, the Court appointed The Fuller Landau Group Inc. as receiver of the property of Lion's Share.

[6] Lion's Share's operations consisted principally of the issuance of promissory notes to persons to generate funds to be advanced as loans by way of promissory notes to other individuals and companies.

[7] Claire Drage owns Lion's Share.

[8] Ms. Drage is also CEO of The Windrose Group Inc. ("Windrose").

[9] On April 8, 2024, Ms. Drage filed an assignment in bankruptcy.

[10] Mr. Sutor is one of the four principals of a significant Lion's Share borrower group consisting of Balboa Inc., DSPLN Inc., Happy Gilmore Inc., Interlude Inc., Multiville Inc., The Pink Flamingo Inc., Hometown Housing Inc., The Mulligan Inc., Horses In The Back Inc., Neat Nests Inc., and Joint Captain Real Estate Inc. (collectively, the "Balboa Borrowers"). Mr. Sutor has certain guarantee obligations in respect of the Balboa Borrowers. The Balboa Borrowers commenced CCAA proceedings on or about January 23, 2024.

[11] In addition to the guarantee obligations in respect of the Balboa Borrowers, Mr. Sutor signed promissory notes in his personal capacity in favour of Lion's Share on behalf of certain companies indebted to Lion's Share, including: 10 Norfolk St. Inc. ("Norfolk"), 388 Downie St. Inc. ("Downie"), Commercial Urkel Inc. ("Commercial Urkel"), Happy Town Housing Inc. ("Happy Town"), and Up-town Funk Inc. ("Up-town Funk") (collectively the "Non-Balboa Borrowers"). Mr. Sutor is the sole shareholder of each of these companies (other than Commercial Urkel, of which Mr. Sutor is a 50% shareholder). Each company owns one real property asset, except Happy Town, which owns two.

[12] By letter dated June 18, 2024 to Norfolk, Downie, Commercial Urkel, Happy Town, Up-town Funk, Mr. Sutor, and Aruba Butt, the LS Receiver made demand for payment under the promissory notes. The demand letter stated:

[...]

The Promissory Notes require the Borrowers to repay the funds advanced by the Lender by certain dates (the "Maturity Dates"). Dylan Sutor (the "Guarantor") is a signatory to each note as a guarantor of the Borrower's obligations. In addition, Aruba Butt (the "38 Duncan Guarantor", and together with the Guarantor, the "Guarantors") is a signatory to the 38 Duncan Note (as defined in Schedule A to this letter) as a guarantor of Commercial Urkel Inc.'s obligations under the 38 Duncan Note.

Pursuant to each of the Promissory Notes, the Guarantor, on an unlimited basis, guaranteed the obligations of each Borrower to the Lender, including payment of all amounts owing under each Promissory Note. Pursuant to the 38 Duncan Note, the 38 Duncan Guarantor, on an unlimited basis, guaranteed the obligations of Commercial Urkel Inc. to the Lender, including payment of all amounts owing under the 38 Duncan Note. The Maturity Dates for all of the Promissory Notes have now passed and there is unpaid interest on all of the Promissory Notes, but neither the Borrowers nor the Guarantors have paid the amounts owing, as applicable. Please be advised that as further set out below, the Borrowers and the Guarantors are in default of their obligations under each of their respective Promissory Notes, including monetary defaults.

[...]

On behalf of the Lender, and without in any way prejudicing the Lender from demanding any other amount properly owing to it or taking such other steps and making such further demands as the Receiver may see fit, the Receiver hereby makes formal demand for payment of the following amounts from each Borrower, the Guarantor, and in the case of the amounts owing by Commercial Urkel Inc., the 38 Duncan Guarantor:

1. 10 Norfolk St. Inc.: \$281,342.35;
2. 388 Downie St. Inc.: \$130,981.21;
3. Commercial Urkel Inc.: \$273,398.32;
4. Happy Town Housing Inc.: \$318,426.20; and
5. Up-town Funk Inc.: \$263,801.75;

[...]

[13] On August 16, 2024, the LS Receiver issued a second demand letter to Downie and Mr. Suitor demanding repayment of an amount of \$1,403,393.17 from Downie and Mr. Suitor (as guarantor) further to an additional promissory note.

[14] On August 30, 2024, the LS Receiver filed an application for a bankruptcy order in respect of Mr. Suitor.

[15] On October 7, 2024, TDB Restructuring Limited was appointed as the interim receiver of all Mr. Suitor's property, assets and undertakings.

## Analysis

[16] The applicant asks the Court to adjudge Mr. Suitor as bankrupt and make a bankruptcy order. Under s. 43 of the *Bankruptcy and Insolvency Act* (the “BIA”):

(1) Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that

(a) The debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and

(b) The debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

[...]

(6) At the hearing of the application, the court shall require proof of the facts alleged in the application and of the service of the application, and, if satisfied with the proof, may make a bankruptcy order.

(7) If the court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the debtor that the debtor is able to pay their debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

[...]

(9) If the debtor appears at the hearing of the application and denies the truth of the facts alleged in the application, the court may, instead of dismissing the application, stay all proceedings on the application on any terms that it may see fit to impose on the applicant as to costs or on the debtor to prevent alienation of the debtor’s property and for any period of time that may be required for trial of the issue relating to the disputed facts

[17] The applicant must establish that Mr. Suitor owes it a debt of at least \$1,000, and that Mr. Suitor has committed an act of bankruptcy within six months preceding the date of the application. For the purposes of s. 43(1)(b), the act of bankruptcy relied upon by the applicant is s. 42(1)(j) of the BIA: “if he ceases to meet his liabilities generally as they become due.”

[18] The burden of proof in a bankruptcy application is the civil standard: *1719108 Ontario Inc. c.o.b. as Zoren Industries*, 2024 ONSC 909, at para. 40.

*Does Mr. Suitor have debts owing to the applicant creditor of at least \$1,000?*

[19] The applicant claims Mr. Suitor owes \$2,671,342 to Lion's Share under certain promissory notes with the Non-Balboa Borrowers.

[20] The application is founded based on Mr. Suitor's debts to the applicant. I am satisfied that Mr. Suitor has debts to the applicant of at least \$1,000.

[21] The applicant says that Mr. Suitor's debt arises due to certain Promissory Notes he signed as a personal guarantor regarding loans to the Non-Balboa Borrowers. The issue of whether Mr. Suitor has debts owing to the applicant of at least \$1,000 comes down to whether he is liable under the promissory notes he signed as guarantor in respect of the Non-Balboa Borrowers.

[22] The parties agree that the form of promissory note that was used for the liability in issue in this proceeding is substantially similar to the form of promissory note at tab 7 of the applicant's oral compendium. At tab 7 of the applicant's oral compendium is a sample promissory note (the "Norfolk Promissory Note"). Mr. Suitor signed eight promissory notes of the same form (different company, debt amount, date, etc.) (each a "Promissory Note").

[23] Despite having signed the Promissory Notes, Mr. Suitor denies that he is personally liable under these Promissory Notes.

[24] Mr. Suitor does not dispute that there is more than \$1,000 owing by the companies under the Promissory Notes.

[25] Mr. Suitor submits that the applicant has not proven a debt of \$1,000. I disagree.

[26] As noted in *Beach (Re)*, 2022 ONSC 6474, at para. 25, citing *Diewold v. Diewold* (1940), [1941] S.C.R. 35, “[a] debt is a sum payable in respect of a liquidated demand, recoverable by action.” The Court states further, at para. 26, citing *Relectra Limited, Re* (1979), 30 C.B.R. (N.S.) 141, that “[s]o long as it is proved that the debtor is indebted to the applicant creditor for at least \$1,000, it is unnecessary for the court to determine the exact amount owing to the applicant creditor.”

[27] The issue of whether Mr. Suitor is personally liable under these promissory notes is a matter of contractual interpretation.

[28] A guarantee is contractual promise: *Patrick Street Holdings Limited v. 11368 NL Inc.*, 2024 NLCA 11, at para. 540. As noted in *Xiang v. Atlas Healthcare (Brampton) Ltd.*, 2021 ONSC 1225, at para. 43, “the extent of a guarantor’s liability under a guarantee is a matter of contractual interpretation with respect to the construction of the guarantee at issue.”

[29] The principles of contractual interpretation were recently summarized by the Court of Appeal in *Royal Bank of Canada v. Peace Bridge Duty Free Inc.*, 2025 ONCA 54, at para. 25:

- a. Determine the intention of the parties in accordance with the language they have used in the written document, based upon the “cardinal presumption” that they have intended what they have said;
- b. Read the text of the written agreement as a whole, giving the words used their ordinary and grammatical meaning, in a manner that gives meaning to all of its terms and avoids an interpretation that would render one or more of its terms ineffective;
- c. Read the contract in the context of the surrounding circumstances known to the parties at the time of the formation of the contract. The surrounding circumstances, or factual matrix, include facts that were known or reasonably capable of being known by the parties when they entered into the written agreement, such as facts concerning the genesis of the agreement, its purpose, and the commercial context in which the agreement was made. However, the factual matrix cannot include evidence about the subjective intention of the parties; and
- d. Read the text in a fashion that accords with sound commercial principles and good business sense, avoiding a commercially absurd result, objectively assessed.

[30] The applicant submits that the plain language of the promissory notes illustrates an objective intention to make Mr. Suitor liable as a guarantor of the amounts due under the notes. I agree.

[31] In each Promissory Note, Mr. Suitor is described as both a “Borrower” and a “Guarantor”. At the top of the Promissory Note the “Borrowers” are set out as follows:

**Borrowers:** 10 Norfolk St. Inc. [or another company owned by Mr. Suitor, or in the case of Commercial Urkel, by Mr. Suitor and Ms. Butt] (the “Borrowers”) with personal guarantor(s) Dylan Suitor (the “Borrowers”)

[32] Mr. Suitor is defined as a “Borrower”.

[33] The term “Guarantor” (capitalized), although used twice in the Promissory Note, is not a defined term. Guarantor (capitalized) appears on the signing lines and in section 8 of the Promissory Notes.

[34] Mr. Suitor also signed the Promissory Notes twice. Once for the company Borrower, and once in his personal capacity, which signing line is set out as follows:

---

Dylan Suitor (Borrowers/Guarantors)

[35] The term Borrower(s) is used throughout the Promissory Note to set out the payment and other obligations of the Borrowers. Among other things, in the Norfolk Promissory Note the Borrowers promise to pay the Lenders the principal sum of \$200,000. The term Guarantors<sup>1</sup> is used only at the bottom of the Promissory Notes, and in section 8,<sup>2</sup> which provides:

All costs, expenses and expenditures including, and without limitation, legal costs, fees and disbursements on a **substantial indemnity basis**, incurred by the Lenders in enforcing this Note as a result of any default by the Borrowers, will be added to the principle then outstanding and will immediately be paid by the Borrowers. In the case of the Borrowers default and the acceleration of the amount due to the Lenders all amounts outstanding under this Note will bear interest at the rate of 3% higher than the Initial Interest Rate charged per annum from the date of demand until paid. This Note is secured by the Lenders [sic] right to register this Note on title on **all or any properties held by the Borrowers and Guarantors as security** (the ‘Security’), if not paid in full by 6:00 pm on April 13, 2024. This includes, but is not limited to, the property located at [...].

[36] Section 8 of the Promissory Notes permits registration on title to any properties held by the Borrowers and Guarantors as security. As noted by the applicants, the ability to register the note on title to Mr. Suitor’s personal properties supports their position that he has a payment obligation.

[37] Mr. Suitor argues that he was only a guarantor (and not personally liable) and that the Promissory Notes are void of any terms regarding the guarantee. Mr. Suitor points to *Times Square v. Shimizu*, 2001 BCCA 448, as an example of a case where the majority of the court refused to enforce a guarantee because there was no provision with substantive content defining the guarantee obligation. He submits the Promissory Notes similarly do not define the guarantee obligation. I disagree. In *Times Square* the guarantor was separately defined as the guarantor and there were no obligations on the guarantor. As noted above, in the instant case Mr. Suitor is also defined as a borrower.

[38] Mr. Suitor also points to *Waterloo-Oxford Co-Operative Inc. v. Hamm*, 2005 CanLII 2953 (Ont. Sup. Ct.). For similar reasons, *Waterloo-Oxford* is not applicable to the instant case. In *Waterloo-Oxford* the court was faced with a very broad guarantee that could be interpreted in either of two ways: one party said that it was a guarantee of all debts incurred as of the date of the guarantee; the other party said that it was a guarantee for any debts ever incurred or to be incurred at any time before, during or after the date of the letter. The court refused to enforce the letter guarantee because it lacked enough precision to be enforced.

---

<sup>1</sup> The term “guarantor” issued in the definition of “Borrowers” as set out above.

<sup>2</sup> There was a prior form of promissory note that was used to evidence loans with Lion’s Share. Section 8 is different in those prior promissory notes.

[39] Mr. Suitor submits that the guarantee provisions in the Promissory Notes are completely lacking. However, this again ignores the fact that Mr. Suitor is also defined as a borrower under the Promissory Notes.

[40] Mr. Suitor states that he cannot have the same obligations as the corporate borrower under the Promissory Notes. He argues that principal debtors and guarantors are distinct at law.

[41] The applicant submits that there is no law that suggests that a guarantor cannot have the same obligations as the principal debtor. This is, there is no reason why a lender and borrower and guarantor cannot sign an agreement where the guarantor is liable for all obligations of the borrower. I agree. This comes down to contractual interpretation and what was agreed among the parties. Mr. Suitor is the sole shareholder of these companies (other than Commercial Urkel), and he contractually agreed to be the personal guarantor in respect of all terms of the Promissory Notes.

[42] Mr. Suitor also relies on *Chand Morningside Plaza Inc. v. Healthy Lifestyle Medical Group Inc.*, 2024 ONSC 7285, which does not apply to the instant case. As noted by Koehnen J. in para. 81, the guarantors in *Chand* were accommodation sureties, the parents of the borrower. They had provided a guarantee “with the expectation of little or no remuneration for the purpose of accommodating others.”<sup>3</sup> That is not the case here. Mr. Suitor guaranteed the loans to companies of which he holds, directly or indirectly, 100% of the shares (other than Commercial Urkel, of which he holds 50% of the shares).

[43] The Promissory Notes are each just over two pages long. They have drafting issues. Among other things, the term “Guarantor” is not defined. Mr. Suitor is defined with the corporate entity as the Borrowers. However, reading the document as a whole, and taking into consideration the fact that Mr. Suitor knew that he was a personal guarantor (as discussed further below), the commercially reasonable interpretation is that Mr. Suitor is the guarantor of the loan to the company in which he held all (or 50%) of the shares. The plain language of the document defines Mr. Suitor as Borrower and gives him the same obligations as the corporate borrower. Accordingly, in his capacity as guarantor Mr. Suitor agreed to the same terms as the borrower company. That is the contract that was reached among the parties.

[44] Mr. Suitor also argues that there was no *consensus ad idem*. As noted by the Court of Appeal in *UBS Securities Canada v. Sands Brothers Canada, Ltd.*, 2009 ONCA 328, 95 O.R. (3d) 93, at para. 47, in order for a contract to exist, there must be a meeting of minds, or *consensus ad idem*.

[45] Mr. Suitor says that he was not aware of his personal liability under the Promissory Notes. This is not credible given the record before me. Included in Ms. Drage’s evidence is a link to a webinar, which I viewed. Ms. Drage stated in her affidavit that she and Mr. Suitor jointly participated in the webinar with some of the lenders to Mr. Suitor and his companies. During the

---

<sup>3</sup> *Citadel Assurance v. Johns-Manville Canada Inc.*, [1983] 1 S.C.R. 513, at 521.

webinar Ms. Drage explained to all participants that “Dylan has provided a personal guarantee, not just of the property and the corporation that property’s in, but his entire portfolio and assets.” Mr. Suitor, who was also on screen at the webinar, including when Ms. Drage made the statement regarding Mr. Suitor’s personal guarantee, did not disagree or say anything in response.

[46] Mr. Suitor’s position, as set out at para. 93 of his factum, is that:

- a. Mr. Suitor was not asked to provide financial net worth information to Drage or lenders.
- b. None of the Windrose/Drage materials, communications, and/or advertisements include any reference to personal liability related to the LS-Investor Notes or the Promissory Notes. In fact, the Promissory Notes were consistently described as high risk and requiring a general securities agreement to create security.
- c. The term “guarantee” was used inconsistently and ambiguously in the LS-Investor Notes. In early LS-Investor Notes, the right to register the LS-Investor Note on title to the corporate borrower’s property was explained as “the personal guarantee”, when it did not relate to Suitor. In other LS-Investor Notes, both Suitor and his corporation were described as “Borrowers/Guarantors”.
- d. The sole Windrose presentation to lenders for Promissory Note opportunities related to Suitor in evidence interchangeably states that Suitor and his corporation provided a “personal guarantee”; the security described in the presentation is exclusively in relation to the lender’s right to register the note on the corporate borrower’s property. The presentation also referenced that Drage was underwriting the Promissory Note, which created further ambiguity on who (if anyone) was personally liable.

[47] In my view, none of the above submissions take away from the fact that the parties signed the Promissory Notes setting out the terms of the agreement and monies were advanced further to such Promissory Notes. The fact that Mr. Suitor was not asked to provide financial net worth information does not impair the meaning of the contract. The marketing materials and presentations are not part of the contract and were general materials/presentations provided to potential lenders by Windrose/Drage. Finally, the prior promissory notes are just that — prior notes. The form of promissory note used by Lion’s Share changed at some point. The ones in issue in this application are the revised form, several of which were signed by Mr. Suitor.

[48] As set out by the Court of Appeal in *UBS Securities Canada*, at para. 86, the test for consensus ad idem is an objective one. I agree with the applicant that because there is a written agreement and money was advanced further to the written agreement, there was consensus ad idem. In respect of each Promissory Note, there was a signed contract and action taken under the contract – of course there was of meeting of the minds.

*Are there multiple creditors or special circumstances?*

[49] Mr. Suitor submits that the applicants have not established that there are other creditors or special circumstances.

[50] As noted by the Court in *In the Matter of the Bankruptcies of Jasvir Johal Sulakhan Johal*, 2024 ONSC 7386 (“*Johal*”), at para. 43, citing *Levesque (Re)*, 2016 ONCA 393, 36 C.B.R. (6th) 217, at para. 7, “the provisions of the *BIA* are intended to be utilized for the benefit of the creditors of a debtor as a class, not for the enforcement of an individual debt.”

[51] Only where special circumstances exist will the court grant bankruptcy in a single creditor case: *Johal*, at para. 44. The categories of special circumstances were set out in *Valente v. Courrey* (2004), 70 O.R. (3d) 31, at para. 8:

- a. Where repeated demands for payment have been made within the six-month period;
- b. Where the debt is significantly large and there is fraud or suspicious circumstances in the way the debtor has handled its assets which require that the processes of the *BIA* be set in motion; and
- c. Prior to the filing of the petition, the debtor has admitted its inability to pay creditors generally without identifying the creditors.

[52] In *Johal*, Osborne J. referred to the expansion of the categories of special circumstances in *Sergio Grillone (Re)*, 2023 ONSC 5710. Osborne J. notes at para. 50:

In that case, Kimmel J. observed that, in the particular circumstances of that matter, an order under s. 43(1) of the *BIA* was necessary to achieve an orderly distribution of the estate of the bankrupt to creditors, and to create a single forum in which the multiplicity of claims involving the debtor could be determined while ensuring that no creditor obtains an unfair advantage over the others in the interim. In that case, the Court found that such was a special circumstance that supported the granting of a bankruptcy order.

[53] In *Johal* Osborne J. determined that there were no special circumstances justifying the bankruptcy application. The bankruptcy applications were stayed, and the creditor was directed to pursue its claims in CCAA proceedings that were ongoing in respect of the companies owned by the debtors. At para. 51, Osborne J. noted that he was applying the same rationale expressed by Kimmel J. in *Grillone*, namely creating a single forum for the many claims.

[54] Mr. Suitor argues that the applicants have not established that he has other debts, nor are there special circumstances that would warrant a bankruptcy order with a single creditor.

[55] The LS Receiver argues that there are other debts, pointing to (i) the Statement of Claim by Nicole Kelly against Upgrade Housing Inc. and Mr. Suitor, and the Statement of Defence filed (the “Kelly Claim”), (ii) the demand letter to Mr. Suitor, Aruba Butt, and Commercial Urkel from counsel to Dennis and Jessica Domenichini (the “Domenichini Claim”); and (iii) the Balboa creditors under the CCAA proceedings.

[56] The Kelly Claim is a claim for payment of \$75,000 (plus interest) in accordance with a promissory note. The Domenichini Claim is for \$630,642.38 (plus further interest) in respect of a mortgage that has matured and remains in default since November 12, 2023. There is evidence on the record that there are other creditors. Mr. Suitor has not provided anything to refute that there are other creditors, other than to assert that the applicant’s evidence is insufficient.

[57] Mr. Suitor states that the applicant has not led “sound and convincing evidence” of these debts as required. He points to *Barkhouse (Re)*, 2018 NSSC 101 and *Levesque (Re)*, 2016 ONCA 393, 36 C.B.R. (6th) 217, at para. 6. *Barkhouse* deals with proof of the debts owing to the applicant, not other third-party creditors. *Levesque*, at para. 6, in considering the issue of whether the debtor had ceased to meet his liabilities generally as they become due, stated:

The application judge correctly set out the nature of bankruptcy proceedings and the standard of proof, at para. 4 of her reasons:

It is well established that proceedings under the *BIA* are quasi-criminal in nature. The act(s) of bankruptcy and all allegations set out in the application must be proven on sufficient evidence: *Re Holmes* (1975), 9 O.R. (2d) 240 (S.C.); *Re Valente* (2004), 70 O.R. (3d) 31 (C.A.).

[58] At para. 4 of *Levesque* the Court of Appeal set out the essential elements that the petitioning creditor must establish to obtain a bankruptcy order, which do not include debts of other creditors. In fact, s. 43(1) of the *BIA* contemplates that “one or more creditors” may file an application for a bankruptcy.

[59] Based on the record before me, I am satisfied that Mr. Suitor has other creditors. In any event, I agree with the LS Receiver that the special circumstances noted in *Grillone* apply here. Mr. Suitor’s plan is to sell the properties that he holds through the various companies. As discussed above, there are numerous creditors potentially involved with this estate. A bankruptcy trustee will be able to deal with Mr. Suitor’s assets. Similar to *Grillone*, an order under s. 43(1) of the *BIA* will allow for the orderly distribution of Mr. Suitor’s assets to his creditors and will create a single forum in which the multiple claims involving Mr. Suitor can be determined.

*Has Mr. Suitor ceased to meet his liabilities generally as they become due?*

[60] The second part of the test that the applicants must satisfy is that Mr. Suitor must have committed an act of bankruptcy. As noted above, the applicants rely on s. 42(1)(j) of the *BIA*: “if he ceases to meet his liabilities generally as they become due.”

[61] The LS Receiver made demand on the non-Balboa promissory notes within six months of the commencement of the application. Payment on the notes has not been made.

[62] Mr. Suitor points to his illiquid assets that he holds personally or directly or indirectly through one of the Non-Balboa Borrowers.

[63] As the Quebec Superior Court clarified in *Immeubles Zenda Ltée/Zenda Realties Ltd. et A. Schuster Holdings Inc.*, 2020 QCCS 3450, at paras. 15-16, the lack of liquidity does not assist a creditor who is unable to pay his or her debts as they become due:

[15] The Debtors argue that the bankruptcy applications should be dismissed because the value of their assets – essentially their investments in commercial properties – is greater than the amount of their debts. However, this is an irrelevant consideration. The issue is not whether the Debtors have sufficient assets to pay their debts, but whether they have ceased to meet their liabilities generally as they become due.

[16] Zenda and Levy do not deny that they have ceased meeting their liabilities generally as they become due. They do not deny that they are presently unable to pay their creditors. Their argument is that they need time to liquidate their real estate holdings in order to pay their creditors.

[64] Mr. Suitor's case is similar to that in *Immeubles Zenda*. The fact that he has illiquid real estate assets through the companies he holds directly or indirectly does not assist in meeting the test of whether he has ceased to meet his liabilities generally as they become due. It is not a question of whether Mr. Suitor potentially could pay if he sold off his illiquid assets; it is whether he has failed to meet his liabilities as they become due.

[65] I am satisfied that Mr. Suitor has committed an act of bankruptcy.

*Should the Court exercise its discretion under s. 43(1) of the BIA?*

[66] The Court can exercise discretion under s. 43(7) of the BIA to not grant the bankruptcy order if Mr. Suitor proves that he can pay his debts:

(7) If the court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the debtor that the debtor is able to pay their debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

[67] Mr. Suitor has not proven that he can pay his debts.

[68] In *Medcap Real Estate Holdings Inc. (Re)*, 2022 ONCA 318, 468 D.L.R. (4th) 253, the court stated, at para. 9, that the power in s. 43(7) of the BIA is discretionary.

[69] Collier J., of the Quebec Superior Court in *Immeubles Zenda*, at para. 31, citing *Goulakos (Syndic de)*, 2016 QCCS 84, stated:

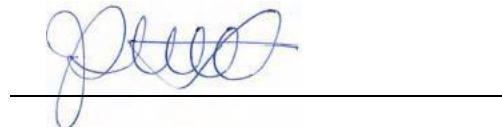
The Court's discretion to stay a bankruptcy application under ss 43(7) and 43(11) *BIA* "should not be exercised lightly, but on the basis of sound judicial reasoning, credible evidence, according to common sense and in a manner which does not cause an injustice."

[70] In Mr. Suitor's supplementary affidavit, he provides estimated values of the various properties he owns directly (or through the companies) and details of the mortgages on the properties. He sets out a chart where he estimates that he would have approximately \$1.48 million remaining after paying the secured lenders, the debt claimed by the applicants as set out in their demand letters, and commission on the real property sales.

[71] While there are appraisals from within the last year for certain of the properties, in some cases the appraisals date back to 2022 or 2023. Of greater concern, however, is the lack of other financial information regarding the companies. Because the bulk of the real properties are owned by companies which Mr. Suitor either directly or indirectly owns, the Court would need the full financial picture of these companies to understand the value of Mr. Suitor's shares in the companies. Other than the specific property information, Mr. Suitor has not disclosed the other assets and liabilities of the companies. With regard to the properties Mr. Suitor owns personally, even assuming the March and April 2024 valuations continue to represent the value of the properties, after payment of the mortgages on the properties, there would not be sufficient net proceeds to satisfy the applicant's debt.

[72] Accordingly, I am not satisfied that the court should exercise its discretion under s. 43(7) of the *BIA*.

J. Steele J.



**Released:** March 25, 2025

**CITATION:** Suitor v. Fuller Landau Group, 2025 ONSC 1686  
**COURT FILE NO.:** BK-24-208718-00OT  
**DATE:** 20250325

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**IN THE MATTER OF THE BANKRUPTCY OF  
THOMAS DYLAN SUITOR  
AN INDIVIDUAL WITH A LOCALITY OF  
BURLINGTON, ONTARIO**

---

**REASONS FOR DECISION**

---

Justice Steele

**Released:** March 25, 2025

# EXHIBIT J



MILLER THOMSON LLP  
ONE LONDON PLACE  
255 QUEENS AVENUE, SUITE 2010  
LONDON, ON N6A 5R8  
CANADA

125  
T 519.931.3500  
F 519.858.8511  
MILLERTHOMSON.COM

February 24, 2025

**Tony Van Klink**  
Direct Line: +1 519.931.3509  
tvanklink@millerthomson.com

**Delivered via Registered Mail and Email**  
**(dylan@elevationrealty.ca)**

File No. 0200437.0119

1391 Ontario St. Inc.  
245 Wyecroft Rd., Suite 4  
Oakville, ON L6K 3Y6

Attention: Dylan Sutor

Dear Sir:

**Re: Loan with Business Development Bank of Canada ("BDC")**

We are the lawyers for BDC.

We refer to the Letter of Offer dated December 2, 2022 (the "Loan Agreement") made between BDC, as lender, and 1391 Ontario St. Inc. (the "Company"), as borrower, and the loan made by BDC to the Company thereunder (the "Loan").

As of February 24, 2025, there was an outstanding balance of \$2,435,269.21 on the Loan comprised as follows:

Loan	Principal	Interest	Annual Admin. and NSF Fees	Total
242499-01	\$2,371,650.00	\$62,834.21	\$785.00	\$2,435,269.21

The Company has failed to make required payments on the Loan. Default has occurred under the Loan Agreement and the security held by BDC. The Loan Agreement provides that upon a default, BDC has the right to demand immediate repayment of the Loan and accumulated interest.

On behalf of BDC we hereby demand immediate payment from the Company of the outstanding balance on the Loan in the amount of \$2,435,269.21, plus accruing interest thereon and all accrued and accruing costs.

Unless the Loan is repaid as demanded, BDC will take steps to recover the outstanding balance, including the enforcement of the security which it holds over the assets of the Company, including the property municipally known as 1391 Ontario Street, Burlington.

Enclosed is a notice pursuant to s. 244 of the *Bankruptcy and Insolvency Act*.

Yours truly,



Tony Van Klink  
TVK/jf

Enclosure  
c. Gianna Torrelli



82867258.1

**NOTICE OF INTENTION TO ENFORCE SECURITY  
(SUBSECTION 244(1) OF THE BANKRUPTCY AND INSOLVENCY ACT)**

**TO:** 1391 Ontario St. Inc.,  
an Insolvent Person

**TAKE NOTICE THAT:**

1. **Business Development Bank of Canada**, a secured creditor, intends to enforce its security on the property of the insolvent person, being:
  - (a) all properties, assets and undertakings of the insolvent person including, without limitation all present and future personal property, whether tangible or intangible, and including, without limitation, all inventory, equipment, machinery, fixtures, accounts receivable, monies, choses in action, documents of title, securities and any and all proceeds derived from any dealing therewith; and
  - (b) the real property legally described as PT LTS 14, 15 & 16 , PL 90 , AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292 ; BURLINGTON (PIN 07082-0016) LRO #20 and municipally known as 1391 Ontario Street, Burlington, Ontario (the "Real Property").
2. The security that is to be enforced is in the form of:
  - (a) General Security Agreement dated January 11, 2023; and
  - (b) Charge/mortgage for the Real Property registered in LRO #20 on January 13, 2023 as instrument no. HR1943677.
3. The total amount of indebtedness secured by the security as at the present time is \$2,435,269.21 as at February 24, 2025, together with accruing interest and costs.
4. The secured creditor will not have the right to enforce the security until after the expiry of the ten-day period following the sending of this Notice, unless the insolvent person consents to an earlier enforcement.

**DATED** at London, Ontario this 24th day of February, 2025.

**BUSINESS DEVELOPMENT BANK  
OF CANADA**

By its Solicitors

Miller Thomson LLP  
2010 – 255 Queens Avenue  
London, ON N6A 5R8

Per:

Tony Van Klink

# EXHIBIT K



**Certificate No.:** 13136  
**Date of Certificate:** Apr 30, 2025

**129**

**TAX CERTIFICATE**  
City of Burlington  
P.O. Box 5080  
Burlington ON L7R 4G4  
Tax Office (905) 335-7750  
Toll Free 1-877-213-3609  
[taxownership@burlington.ca](mailto:taxownership@burlington.ca)

**Issued To:**  
Rebecca Armstrong  
255 Queens Ave. Suite 2010  
London ON N6A 5R8  
rarmstrong@millerthomson.com

**Account Number:** 119313  
**Roll Number:** 2402-060-604-10400-0000  
**Owner(s):** 1391 ONTARIO ST. INC.  
**Civic Address:** 1391 ONTARIO ST BURLINGTON  
**Legal Description:** PLAN 90 PT LOTS 14,15,16

**Reference:** 0200438.0119

**Interest:** 1.25%

Property Class	Property Class Description	Assessed Value
R-T	Residential - Taxable Full	767,400
C-T	Commercial	1,541,600

Tax Year	Taxes Levied	Taxes Owing	Other Fees and Charges	Penalty/Interest	Total Owing
2025	\$42,019.54	\$18,052.51	\$0.00	\$366.70	\$18,419.21
2024	\$40,103.78	\$23,180.11	\$0.00	\$2,580.82	\$25,760.93
2023	\$37,765.16	\$0.00	\$0.00	\$0.00	\$0.00
2022	\$36,080.12	\$0.00	\$0.00	\$0.00	\$0.00
Prior Owing		\$0.00	\$0.00	\$0.00	\$0.00
<b>Total</b>		<b>\$41,232.62</b>	<b>\$0.00</b>	<b>\$2,947.52</b>	<b>\$44,180.14</b>

Bylaw	Annual Amount	Expiry	Description – Local Improvement	Status

Bill Type	Bill Date	Tax Year	Effective Date	Installment Due Date	Amount
Interim	JAN 10, 2025	2025	JAN 01, 2025	FEB 21, 2025	\$9,026.51
Interim	JAN 10, 2025	2025	JAN 01, 2025	APR 21, 2025	\$9,026.00

Please note that other fees may apply.

Tax responsibility runs with the land. Any future tax additions or adjustments relating back to a prior ownership must be dealt with by the current owner through the solicitor(s) involved in the sale.

Any Credit Balance appearing on this Certificate is not verified. No adjustment should be made unless the credit balance is a known and acknowledged overpayment.

I hereby certify this statement shows all arrears of taxes against the above lands as of the date of this certificate.

*Ann Marie Coulson*

FOR TREASURER AND TAX COLLECTOR

BUSINESS DEVELOPMENT  
BANK OF CANADA

Applicant

and

1391 ONTARIO ST. INC.

Respondent

Court File No:

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

---

**AFFIDAVIT OF GIANNA TORRELLI  
(SWORN MAY 5, 2025)**

---

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink (LSO#: 29008M)**  
tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

**Lawyers for the Applicant,  
Business Development Bank of Canada**

# **TAB 3**

Court File No. CV-25-00090112-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) TUESDAY, THE 3<sup>RD</sup>  
                          )  
JUSTICE                )  
                          )  
                          DAY OF JUNE, 2025

**BUSINESS DEVELOPMENT BANK OF CANADA**

**Applicant**

- and -

**1391 ONTARIO ST. INC.**

**Respondent**

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 C. B-3 AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C-43, AS AMENDED

**ORDER  
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended (the "CJA") appointing msi Spergel Inc. as receiver and manager (in such capacities, the "Receiver") without security, of the real property described on Schedule A to this Order (the "Real Property") owned by the respondent, 1391 Ontario Street Inc. (the "Debtor"), was heard this day at 45 Main Street East, Hamilton, Ontario, by videoconference.

ON READING the affidavit of Gianna Torrelli sworn May 5, 2025 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant and such other parties as listed on the

participant information form, no one appearing for any other party on the service list although duly served as appears from the affidavits of service, filed, and on reading the consent of msi Spergel Inc. to act as the Receiver.

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated, as necessary, so that this application is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, msi Spergel Inc. is hereby appointed Receiver, without security, of the Real Property, including all proceeds thereof (collectively, the “Property”).

## **RECEIVER’S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, rents, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the

engaging of independent security personnel, and the placement of such insurance coverage as may be necessary or desirable;

- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (e) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (f) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (g) to sell, convey, transfer, lease or assign the Property with the approval of the Court and in each such case notice under section 31 of the Ontario *Mortgages Act* shall not be required;
- (h) to apply for any vesting order or other orders necessary to convey the Property to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (i) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (j) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (k) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (l) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for the Property;
- (m) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have in respect of the Property; and

(n) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in

paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. THIS COURT ORDERS that no Proceeding affecting the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way affecting the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. THIS COURT ORDERS that all rights and remedies affecting the Property or against the the Receiver, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall (i) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (ii) prevent the filing of any registration to preserve or perfect a security interest, or (iii) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor

are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such

amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*,

the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule B hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### **SERVICE AND NOTICE**

24. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true

copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

32. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

---

**Schedule “A”**

(Real Property)

a) Property Identifier Number 07082-0016, LRO # 20

PT LTS 14, 15 & 16, PL 90, AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292;  
BURLINGTON and municipally known as 1391 Ontario Street, Burlington, Ontario.

**Schedule "B"****RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$\_\_\_\_\_

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "Receiver") of the real property located at 1391 Ontario Street, Burlington, Ontario and the proceeds thereof (the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the 3rd day of June, 2025 (the "Order") made in an action having Court file number CV-25-00090112-0000, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$250,000 which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the last day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the floating base rate of Business Development of Canada from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

msi Spergel Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

BUSINESS DEVELOPMENT  
BANK OF CANADA

and

1391 ONTARIO STREET INC.

Applicant

Respondent

Court File No.: CV-25-00090112-0000

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**RECEIVERSHIP APPOINTMENT ORDER**

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink** LSO#: 29008M  
[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)  
Tel: 519.931.3509  
Fax: 519.858.8511

**Lawyers for the Applicant,  
Business Development Bank of Canada**

# **TAB 4**

Revised: January 21, 2014  
 s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. CV-25-00090112-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

THE HONOURABLE ) WEEKDAY TUESDAY, THE #3<sup>RD</sup>  
 )  
 JUSTICE ) DAY OF MONTHJUNE, 20<sup>YR</sup>2025  
 )

**PLAINTIFF<sup>4</sup>**

Plaintiff

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

**DEFENDANT**

Defendant

**1391 ONTARIO ST. INC.**

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 C. B-3 AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C-43, AS AMENDED**

**ORDER  
(appointingAppointing Receiver)**

<sup>4</sup> The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

THIS MOTION APPLICATION made by the Plaintiff<sup>2</sup>Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended (the "CJA") appointing [RECEIVER'S NAME]msi Spergel Inc. as receiver [and manager] (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of [DEBTOR'S NAME] (the "Debtor") acquired for, or used in relation to a business carried on by the real property described on Schedule A to this Order (the "Real Property") owned by the respondent, 1391 Ontario Street Inc. (the "Debtor"), was heard this day at 330 University Avenue, Toronto45 Main Street East, Hamilton, Ontario, by videoconference.

ON READING the affidavit of [NAME]Gianna Torrelli sworn [DATE]May 5, 2025 and the Exhibits thereto and on hearing the submissions of counsel for [NAMES]the Applicant and such other parties as listed on the participant information form, no one appearing for [NAME]any other party on the service list although duly served as appears from the affidavit affidavits of service of [NAME] sworn [DATE], filed, and on reading the consent of [RECEIVER'S NAME]msi Spergel Inc. to act as the Receiver.<sup>3</sup>

## SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion Application and the Motion Application Record is hereby abridged and validated<sup>3</sup>, as necessary, so that this motion application is properly returnable today and hereby dispenses with further service thereof.

<sup>2</sup>Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

<sup>3</sup>If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

## APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, [RECEIVER'S NAME]msi Spergel Inc. is hereby appointed Receiver, without security, of ~~all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor~~Real Property, including all proceeds thereof (collectively, the "Property").

## RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, rents, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, ~~the relocating of Property to safeguard it~~, the engaging of independent security personnel, ~~the taking of physical inventories~~ and the placement of such insurance coverage as may be necessary or desirable;
- (c) ~~to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;~~

(c) ~~(d)~~ to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) ~~to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;~~

(f) ~~to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;~~

(g) ~~to settle, extend or compromise any indebtedness owing to the Debtor;~~

(d) ~~(h)~~ to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

(e) ~~(i)~~ to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the ~~Debtor~~, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby

<sup>4</sup> ~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (f) ~~(f)~~ to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (g) ~~(k)~~ to sell, convey, transfer, lease or assign the Property ~~or any part or parts thereof out of the ordinary course of business,~~

~~(i) without the approval of this Court in respect of any transaction not exceeding \$\_\_\_\_\_, provided that the aggregate consideration for all such transactions does not exceed \$\_\_\_\_\_; and (ii) with the approval of this the Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause; and in each such case notice under subsection 63(4) of the Ontario Personal Property Security Act, [or section 31 of the Ontario Mortgages Act, as the case may be,]<sup>5</sup> shall not be required, and in each case the Ontario Bulk Sales Act shall not apply.;~~

- (h) ~~(f)~~ to apply for any vesting order or other orders necessary to convey the Property ~~or any part or parts thereof~~ to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

<sup>5</sup> ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- | (i) ~~(m)~~to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- | (j) ~~(n)~~to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- | (k) ~~(o)~~to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- | (l) ~~(p)~~to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for ~~any property owned or leased by the Debtor~~Property;
- | (m) ~~(q)~~to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have in respect of the Property; and
- | (n) ~~(r)~~to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

## DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the ~~business or affairs of the Debtor~~Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. ~~THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.~~

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. ~~8.~~ THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. ~~9.~~ THIS COURT ORDERS that no Proceeding ~~against or in respect of the Debtor~~ ~~or affecting~~ the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way ~~against or~~ ~~in respect of the Debtor or affecting~~ the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. ~~10.~~ THIS COURT ORDERS that all rights and remedies affecting the Property or against the ~~Debtor~~, the Receiver, ~~or affecting the Property~~, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that ~~this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that~~ nothing in this paragraph shall (i) ~~empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on,~~ (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

10. ~~11.~~ THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract,

agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

11. ~~12.~~ THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

12. ~~13.~~ THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies

standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## EMPLOYEES

13. ~~14.~~ THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor ~~until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees.~~ The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## PIPEDA

14. ~~15.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all

material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. ~~16.~~ THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. ~~17.~~ THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any

gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

## RECEIVER'S ACCOUNTS

17. ~~18.~~ THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup>

18. ~~19.~~ THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge ~~of the Commercial List~~ of the Ontario Superior Court of Justice.

<sup>6</sup> ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

19. ~~20.~~ THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## FUNDING OF THE RECEIVERSHIP

20. ~~21.~~ THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$ 250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. ~~22.~~ THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. ~~23.~~ THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule ~~"A"~~B hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. ~~24.~~ THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### **SERVICE AND NOTICE**

24. ~~25.~~ THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website [at](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/) <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. ~~This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <u></u>~~

25. ~~26.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other

correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## GENERAL

26. ~~27.~~ THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. ~~28.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

28. ~~29.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. ~~30.~~ THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and

that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. ~~31.~~ THIS COURT ORDERS that the ~~Plaintiff~~Applicant shall have its costs of this ~~motion~~application, up to and including entry and service of this Order, provided for by the terms of the ~~Plaintiff~~Applicant's security or, if not so provided by the ~~Plaintiff~~Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

31. ~~32.~~ THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

---

32. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry or filing.

---

**SCHEDULE "A"****Schedule "A"****(Real Property)**

a) *Property Identifier Number 07082-0016, LRO # 20*

PT LTS 14, 15 & 16, PL 90, AS IN 854221, EXCEPT PT 2, 20R5222, T/W 589292;  
BURLINGTON and municipally known as 1391 Ontario Street, Burlington, Ontario.

Schedule "B"**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that ~~[RECEIVER'S NAME]~~msi Spergel Inc., the receiver (the "Receiver") of the ~~assets, undertakings and properties~~ ~~[DEBTOR'S NAME]~~ ~~acquired for, or used in relation to a business carried on by the Debtor, including all real property located at 1391 Ontario Street, Burlington, Ontario and the~~ proceeds thereof (~~collectively~~, the "Property") appointed by Order of the Ontario Superior Court of Justice (~~Commercial List~~) (the "Court") dated the 3rd day of June, 2025 (the "Order") made in an action having Court file number CV-CL 25-00090112-0000, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ 250,000 which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded ~~[daily]~~ ~~[monthly not in advance on the]~~ ~~last~~ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the ~~prime commercial lending~~ floating base rate of ~~Bank~~ Business Development of ~~Canada~~ Canada from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the

Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME]msi Spergel Inc., solely  
in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

BUSINESS DEVELOPMENT  
BANK OF CANADA and 1391 ONTARIO STREET INC.

Court File No.: CV-25-00090112-0000

Applicant

Respondent

Double Click on mouse to Add space for Third Party

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at HAMILTON

Double Click on mouse to Add more space to parties line

RECEIVERSHIP APPOINTMENT ORDER

MILLER THOMSON LLP  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

Tony Van Klink LSO#: 29008M  
tvanklink@millerthomson.com  
Tel: 519.931.3509  
Fax: 519.858.8511

Lawyers for the Applicant,  
Business Development Bank of Canada

Document comparison by Workshare Compare on Monday, May 5, 2025 2:20:08 PM

<b>Input:</b>	
Document 1 ID	iManage://MTDMSWSSC.MILLERTHOMSON.CORP/Legal/77861354/1
Description	#77861354v1<Legal> - MODEL RECEIVERSHIP ORDER
Document 2 ID	iManage://mtdmswssc.millerthomson.corp/Legal/84550849/1
Description	#84550849v1<Legal> - Draft Receivership Order - 3-JUNE-2025 (1391 Ontario St.)
Rendering set	Standard

<b>Legend:</b>	
<u>Insertion</u>	
<u>Deletion</u>	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
<u>Moved deletion</u>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	137
Deletions	170
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	307

# **TAB 5**

Court File No.:

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N :

**BUSINESS DEVELOPMENT BANK OF CANADA**

Applicant

- and -

**1391 ONTARIO ST. INC.**

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND  
INSOLVENCY ACT R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE  
COURTS OF JUSTICE ACT, R.S.O. 1990, c. c-43, AS AMENDED

**CONSENT**

msi Spergel Inc. hereby consents to act as receiver and manager of the real property located at 1391 Ontario St., Burlington pursuant to the Application of Business Development Bank of Canada.

DATED at Toronto, Ontario this 2nd day of May, 2025.

**MSI SPERGEL INC.**

Per: Philip H. Gennis

---

Philip Gennis, J.D., CIRP, LIT

BUSINESS DEVELOPMENT BANK  
OF CANADA

and

1391 ONTARIO ST. INC.

Applicant

Respondent

Court File No.:

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**CONSENT**

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON Canada N6A 5R8

**Tony Van Klink** LSO#: 29008M  
Tel: 519.931.3509  
Fax: 519.858.8511  
Email: [tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)

**Lawyers for the Applicant,  
Business Development Bank of Canada**

BUSINESS DEVELOPMENT  
BANK OF CANADA

and

1391 ONTARIO ST. INC.

Applicant

Respondent

Court File No.: CV-25-00090112-0000

***ONTARIO*  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at HAMILTON

**APPLICATION RECORD  
(Returnable June 3, 2025)**

**MILLER THOMSON LLP**  
One London Place  
255 Queens Avenue, Suite 2010  
London, ON N6A 5R8

**Tony Van Klink** LSO#: 29008M  
[tvanklink@millerthomson.com](mailto:tvanklink@millerthomson.com)  
Tel: 519.931.3509  
Fax: 519.858.8511

**Lawyers for the Applicant,  
Business Development Bank of Canada**